PLOVDIV UNIVERSITY "PAISIY HILENDARSKI"

FACULTY OF LAW

Department of Public Law Sciences

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THE INDIRECT REVIEW OF THE LEGALITY OF ADMINISTRATIVE ACTS

ABSTRACT

on the

dissertation for the award of the educational and scientific degree "Doctor" in area of higher education: 3. Social, economic and legal sciences, professional field: *3.6. Law*, Doctoral Programme *"Administrative Law and Administrative Procedure"* at the Department *of Public Law Sciences* of the Faculty of Law of Plovdiv University "Paisiy Hilendarski"

Scientific supervisor: *Assoc. Prof. Konstantin Vassilev Pehlivanov, PhD*

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Tanya Vladimirova Daskalova was enrolled as a full-time doctoral student in the doctoral programme “Administrative Law and Administrative Procedure” at the Department of Public Law Sciences of the Faculty of Law of Plovdiv University “Paisiy Hilendarski” on March 1st, 2022. Assoc. Prof. Konstantin Vassilev Pehlivanov, PhD has been appointed as the scientific supervisor. She was discharged with the right to defence on March 1st, 2025.

The dissertation entitled “The Indirect Review of the Legality of Administrative Acts” has undergone preliminary discussion at a meeting of the Departmental Council of the Department of Public Law Sciences on March 25th, 2025. By decision of the Faculty Council of the Faculty of Law, the same was admitted to defence before a scientific jury composed of:

Internal members:

Prof. Ivan Todorov Todorov, PhD
Prof. Darina Peeva Zinovieva, DSc

External members:

Prof. Tsvetan Georgiev Sivkov, DSc - Faculty of Law, Sofia University "Sv. Kliment Ohridski"
Assoc. Prof. Svetla Ivanova Yankulova, PhD - Faculty of Law, Sofia University "Sv. Kliment Ohridski"
Assoc. Prof. Kapka Svetoslavova Georgieva-Atanasova, PhD - Faculty of Law, Sofia University "Sv. Kliment Ohridski"

I. GENERAL CHARACTERISTICS OF THE DISSERTATION

§1. Relevance and significance of the study

The general clause on judicial appeal of administrative acts, laid down in Art. 120, para. 2 of the Constitution of the Republic of Bulgaria (CRB), means that all administrative acts (individual, general, as well as normative) are subject to judicial review, except for those explicitly specified by law. On the other hand, the Administrative Procedure Code (APC) establishes a prohibition on denial of justice, as Art. 127, para. 2 of the APC provides that courts may not deny justice on the pretext that there is no legal rule on the basis of which to decide the request. The provisions above are an expression of the principle of effective judicial protection as *"... a fundamental principle of Community law stemming from the constitutional traditions common to the Member States, which is enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (...) and which is also reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1)."* [1]

Within the meaning of Art. 120, para. 2 CRB, the Supreme Administrative Court and the administrative courts may carry out direct judicial review of the legality of the acts of the administrative authorities in connection with appeals against administrative acts. Direct judicial review is exercised in appeal proceedings against an administrative act, in which the administrative justice takes place.

Indirect judicial review of the legality of administrative acts, which is outside the scope of direct review under Art. 120, para. 2 CRB, the courts shall carry out in any judicial proceedings in which the question of the legality of the administrative act is decisive for the outcome of the relevant process. Indirect judicial review shall be exercised where this is necessary for the administration of justice in other legal disputes in which the administrative act is not the main subject matter of the relevant proceedings. The significance of indirect review as a form of judicial review of the legality of acts of administrative authorities is manifested to the greatest extent in cases where a certain category of

[1] Case C-432/05 *Unibet (London) Ltd, Unibet (International) Ltd v Justitiekanslern* [2007] ECR I-02271, para. 37.

administrative acts has been made unchallengeable, and it is practically the only possibility of judicial protection against the illegality of such acts. The constitutional basis for this control is precisely the general provision of Art. 120, para. 1 CRB.[2]

The question of the admissibility and exercise of indirect judicial review forms part of the more general question of the relationship between the principle of legality and the principle of legal certainty, and more precisely, of striking a fair balance between them. This raises several questions about the concepts of the rule of law and the separation of powers, the hierarchical relationship between legislative and administrative acts, and the effectiveness of judicial review systems.[3]

Since the entry into force of the Administrative Procedure Code in 2006, indirect judicial review of the legality of administrative acts as a legal institute has not been the subject of a separate scientific study in the legal literature. Professor Kino Lazarov has made the greatest contribution to researching the issue and enriching the matter of indirect judicial review. The subject of research in his research paper "Judicial Assessment of the Invalidity of Administrative Acts"[4] (an unpublished dissertation) is the indirect review of the legality of administrative acts carried out by the courts in the examination of criminal and civil cases, with attention also paid to the peculiarities of indirect review in the administrative process. The merits of the aforementioned work are indisputable, which still constitutes a solid basis on which it 'builds' and develops the doctrine of indirect judicial review, which is inevitably also reflected in the case-law. It should only be noted that Professor Lazarov's work was written before the introduction of the so-called 'general clause' guaranteeing the possibility, in principle, of judicial review of all administrative acts, which changed the point of view of the study carried out.

On its part, in the monograph "Assessment of the Legality of Administrative Acts by the Court (in connection with objections of illegality or

[2]Decision No 2 of 14 February 2023 of the Constitutional Court of the Republic of Bulgaria in constitutional case No 1/2022. (on the constitution of the principles of administrative justice and the rule of law).

[3]Eliantonio, M., D. Dragos. The indirect review of administrative action in search of a fair balance between legality and legal certainty. – In: Eliantonio, M., D.C. Dragos (editors). Indirect Judicial Review in Administrative Law. Legality vs Legal Certainty in Europe. Routledge, London and New York, 2023, 1-12, p. 1.

[4] Lazarov, K. Judicial Assessment of the Invalidity of Administrative Acts. Sofia, 1969 (unpublished dissertation).

ex officio)"[5] Isaac Berakha examined the "special case" where an individual administrative act is referred to the court's review and it is necessary to assess the legality of its basis, the general or individual administrative act on the basis of which the contested act was issued, so that, following that assessment, the contested act may or may not be annulled. Or the case where it is necessary to verify the legality of the order for the non-execution or objection of which a penalty is sought in order for the defendant to be acquitted or convicted. According to Berakha, such an assessment may be triggered either by an interested party or by the court of its own motion.[6]

The lack of in-depth research on indirect judicial review in the last almost 20 years may be due, on the one hand, to the fact that the problem does not remain "closed" only within the administrative process, but, on the contrary, manifests itself also in the civil, criminal and also in the administrative penal process, which further complicates its research. On the other hand, the case-law, which should serve as the subject-matter of the analysis, is full of refusals on the part of the courts to allow indirect judicial review or its formal application, without providing a coherent and detailed statement of reasons. There is, albeit less frequently, a particular situation in which the courts, without expressly declaring it, carry out, in practice, indirect judicial review where the exercise of that review is necessary for the resolution of the dispute in the main proceedings. All this makes it very difficult to find relevant case-law on the matter, sometimes even by keyword. With the exception of the provision of Art. 17, para. 2 of the Civil Procedure Code (CivPC), the lack of explicit legal regulation of indirect judicial review in the Administrative Procedure Code, the Penal Code (PC), the Criminal Procedure Code (CPC) and the Law on Administrative Offences and Penalties (LAOP) tends to deter courts from carrying out this review, and the cases in which it is exercised are significantly less.

Notwithstanding the above, following Decision No 2 of 14 February 2023 of the Constitutional Court of the Republic of Bulgaria in constitutional case No 1/2022 (concerning the constitutionality of the principles of administrative justice and the rule of law) there is a greater tendency on the part of the courts to allow indirect judicial review. Separately, the APC, the CPC and the LAOP contain a number of provisions, the content of which may be interpreted as justifying the possibility of indirect review.

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[5] Berakha, I. Assessment of the Legality of Administrative Acts by the Court (on the occasion of objections of illegality or ex officio). S., Doverie, 1946.

[6] Ibid., p. 5.

The relevance of the study is linked to the fact that in administrative, civil, criminal and administrative penal proceedings the question of the lawfulness of an act of the administrative authorities, which is not the main subject of the proceedings in question, is increasingly raised, but the outcome of those proceedings depends on the assessment of its lawfulness. Similar questions begin to be raised in the tax procedure, which is distinguished by a specific order for examining and resolving disputes. The question referred for a preliminary ruling on the legality of an administrative act essentially involves a number of sub-questions (concerning the persons concerned, the manner in which the question referred for a preliminary ruling is raised, the powers of the court, the legal effect of the indirect judicial review carried out and many others). This requires their combined assessment in order to resolve, by means of indirect judicial review, the question of the lawfulness of the act in question. Some of these sub-questions have hardly been explored in legal theory and are rather not discussed in case-law. Separately, in European Union (EU) law there is a similar legal institute in terms of the effect of its application, provided for in Art. 277 of the Treaty on the Functioning of the European Union (TFEU), which opens the possibility for a change of focus and analysis of indirect judicial review through the prism of Community law.

The above circumstances are an indication of the multi-layered legal nature of indirect judicial review and its manifestation in various branches of law, which allows its examination from specific points of view.

§2. Status of the development of the scientific problem

Given that the subject matter of indirect judicial review is the legality of administrative acts, this legal institute is mainly dealt with in the literature on administrative law and administrative procedure. The contribution of **Professor Kino Lazarov** is undoubtedly highlighted in the study on indirect judicial review. In addition to Prof. Lazarov's above-mentioned research paper *"Judicial Assessment of the Invalidity of Administrative Acts"* (unpublished dissertation), without claiming to be exhaustive, the following could also be mentioned: *"Indirect Review of the Criminal Court on the Legality of Administrative Acts"* (studios) by Prof. Kino Lazarov; *"Indirect Review of the Legality of Administrative Acts Exercised in Civil Proceedings (Eligibility and Scope)"* (article) by Prof. Kino Lazarov;*"Questions on the Administrative Process"* by Prof. Kino Lazarov; *"Administrative Law"* by Prof. Kino Lazarov; *"Judicial Review in the Field of Administration"* (article) by Prof. Kino Lazarov; *"Current Works. Coercive Administrative Measures. Invalidity*

of Administrative Acts. Tied Competence and Operational Self-Reliance" by Prof. Kino Lazarov.

Isaac Berakha's monograph *"Assessment of the Legality of Administrative Acts by the Court (in connection with objections of illegality or ex officio)"* was mentioned above.

The following have also contributed to the development of the doctrine of indirect judicial review: **Acad. Petko Staynov** with his article *"Judicial Review of Courts in the Field of Administration"*; **Professor Ivan Todorov** with the following articles: *"Incidental Review of the Legality of Administrative Acts in Civil and Administrative Proceedings"; "Incidental Review of the Legality of Administrative Acts"; "Can Arbitration Carry Out an Incidental Review of Invalid Administrative Acts"*; **Professor Darina Zinovieva** with her work *"Interpretation in Public Law"*; **Professor Ivan Dermendzhiev** with his work *"The Administrative Act"*; **Professor Doncho Hrusanov** with his article *"Indirect Judicial Supervision of Administrative Acts"*; **Professor Zhivko Stalev** with his work *"Bulgarian Civil Procedure Law"*; **Professor Zhivko Stalev** with the following articles: *"Critical Review of the Case-law of the Supreme Court and of the Supreme State Arbitration under the Civil Procedure Code in 1967"*; *"Judicial Review of Regulations"*; **Evgeni Stoyanov** with his work *"Judicial Review of Individual Administrative Acts"*; **Vassil Petrov** with the following articles: *"Is the Unlawful Administrative Act Effective between Its Entry into Force and Its Repeal as Unlawful? Indirect Review of Legality according to Current Case-law"; "Conflicts between General (Civil) and Administrative Justice in the Review of the Legality of Administrative Acts"; "Is Indirect Review of the Procedural Legality of Regulatory Administrative Acts Permissible?"; "Interpretative Decision of 14 January 2013 in Interpretative Case No 5/2011 of the General Assembly of the Supreme Court of Cassation and Indirect Judicial Review of the Decision of the Administrative Court Challenging an Individual Administrative Act"; "Can the Civil Court Exercise Indirect Judicial Review of a Decision of the Administrative Court Challenging an Individual Administrative Act? Critical Remarks on the Interpretative Decision of 14 January 2013 in Interpretative Case No 5/2011 of the GCCC of the Supreme Court of Cassation"*.

§3. Object, subject and tasks of the study

The object of study of the dissertation work is the indirect review of the legality of administrative acts, exercised by the courts (indirect judicial

review). However, a separate section also examines the similar activity carried out by the administrative authorities, referred to in the dissertation as "indirect *administrative* review of the legality of administrative acts" or "incidental review of legality, carried out *by administrative order"*.

The subject of the dissertation research includes: **1.** The essence of the concept of indirect judicial review of the legality of administrative acts. **2.** Manifestation of the indirect judicial review of the legality of administrative acts in Bulgarian jurisprudence. **3.** Examination of the manifest forms of indirect judicial review in other legal systems.

The research tasks to be performed with the dissertation are as follows: **First,** to clarify the essence of the concept of indirect judicial review of the legality of administrative acts. To that end, a distinction must be drawn between indirect judicial review and specific legal institutes. The legal framework for indirect judicial review should be reviewed and the hypotheses of indirect review in the legislation should be specified. The conditions for exercising indirect judicial review, its scope over administrative acts, including its limits with regard to the type of invalidity of administrative acts, and also the grounds for proceeding with such review should be laid down. It should be established what the powers of the court are when exercising indirect review over administrative acts. It should also be justified what the binding force of the incidental judicial assessment of the legality of the administrative act is and whether its legal effect extends beyond the framework of the specific process. Finally, the similar activity carried out by the administrative authorities, the so-called "indirect *administrative* review of the legality of administrative acts" or "incidental review of legality, carried out *by administrative order*", should also be analyzed. **Secondly,** to reveal the manifestation of indirect judicial review of the legality of administrative acts in Bulgarian jurisprudence. To this end, the manifestations of indirect judicial review over administrative acts in civil, criminal, administrative penal and administrative proceedings should be examined. **Thirdly,** to examine the manifest forms of indirect judicial review in other legal systems. To this end, an overview of indirect judicial review in Western, Central and Northern Europe, in South-Eastern Europe and on the Balkan Peninsula should be made. The so-called "collateral challenge" in England and Wales should also be reviewed. With regard to European Union law, the so-called "plea of illegality" under Art. 277 of the Treaty on the Functioning of the European Union (TFEU) should be examined.

§4. Objectives and methodology of the study

The aim of the dissertation is to reveal the legal nature of indirect judicial review of the legality of administrative acts as a special form of judicial review; to reveal its multifaceted manifestation in the civil, criminal, administrative penal and administrative process; to demonstrate its importance as an independent and effective means of protecting the rights and legitimate interests of individuals, as well as ensuring legality in the activities of administrative authorities, as well as to present its manifest forms in other legal systems, as well as in European Union law.

For the purposes of the dissertation study, the following research *methods* were used, namely: analysis, synthesis, inductive (from the private to the general) and deductive (from the general to the private) method, comparative legal method, comparative method of analysis, systematic analysis.

§5. Volume and structure of the study

The dissertation consists of an introduction, three chapters, a conclusion and a list of cited literature.

Chapter *One* examines the concept of indirect judicial review of the legality of administrative acts. Chapter One is rather theoretical in nature, presenting and analysing some of the most significant views expressed in legal literature on indirect judicial review. A general overview of the legal framework and the hypotheses of indirect judicial review in the legislation is made. The grounds for proceeding to indirect judicial review, its scope, the powers of the court in exercising such review are examined. The issue of the binding force of the incidental judicial assessment of legality and its legal effect is also considered. In conclusion, the legal nature of indirect judicial review is analysed and an attempt is made to present a general definition of it. A separate section of Chapter One also examines the so-called "indirect *administrative* review of the legality of administrative acts" or "incidental review of legality, carried out *by administrative order*". However, before examining the very concept of indirect judicial review, Section 1 of Chapter One clarifies the concepts of "administrative process in a broad and narrow sense", "administrative justice", "administrative dispute" and "judicial control over the administration". A distinction is made in Section 2 of Chapter One between indirect judicial review and specific legal institutes.

Chapter T*wo* examines the manifestation of indirect judicial review in Bulgarian jurisprudence. In Chapter Two, indirect judicial review is presented "in effect". This chapter is dedicated to the case-law relevant to the exercise of

indirect review of legality in civil, criminal, administrative penal and administrative proceedings. Both typical and special cases related to indirect judicial review are examined, and a variety of case-law is cited and analyzed.

Chapter Three deals with the manifest forms of indirect judicial review in other legal systems, including the so-called "collateral challenge" in England and Wales and the so-called "plea of illegality" under Art. 277 TFEU in EU law.

The structure of each chapter, denoted by a Roman numeral, consists of a corresponding number of sections, which are subdivided into a corresponding number of paragraphs denoted by Arabic numerals. The latter, in turn, where necessary, are subdivided into points denoted by Arabic numerals. Items may be subdivided into sub-items. In places in the study, depending on its content, some of the statements are set off in capital Cyrillic letters.

II. EXECUTIVE SUMMARY OF THE CONTENT OF THE DISSERTATION

INTRODUCTION

The introduction of the dissertation justifies the topicality and importance of the study of indirect review as an independent form of judicial review of the legality of administrative acts, which is manifested in various branches of law and is characterized by a multi-layered legal nature. A review of the state of development of the scientific problem has been made. The object, subject and tasks, as well as the objectives and methodology of the study have been defined. The presentation of the introduction of the dissertation is presented at the beginning of this abstract.

CHAPTER ONE

Chapter One of the dissertation is entitled *"The Concept of Indirect Judicial Review of the Legality of Administrative Acts"* and consists of seven sections. Chapter 1 is more theoretical in nature. Section **1** clarifies the concepts of: "administrative process in a broad and narrow sense", "administrative justice", "administrative dispute" and "judicial control over the administration". This is justified by the fact that, regardless of the type of process in which the indirect judicial review is carried out, its subject matter remains the legality of administrative acts, and therefore the above-mentioned

more general concepts should also be clarified from an administrative legal point of view. Section **2** distinguishes indirect judicial review from specific legal institutes. **§1** of Section 2 distinguishes between direct and indirect judicial review of the legality of administrative acts. **§2** of Section 2 distinguishes between indirect judicial review and an incidental declaratory action under Art. 212 of the Civil Procedure Code. **Section 3** deals with the substance and legal framework of indirect judicial review of the legality of administrative acts. **§1** of Section 3 presents and analyses some of the most significant opinions on the nature of indirect judicial review expressed in Bulgarian legal doctrine. At the end of the paragraph, a common definition (concept) of indirect judicial review of legality is proposed, considered in the context of a court proceeding (civil, criminal or administrative). **§2** of Section 3 provides an overview of the provisions that either expressly provide for the possibility of exercising such control or, by way of interpretation, such indications could be inferred from them. In points **2.1. to 2.5.**, the statement traces the existence of similar provisions successively in the CivPC, the PC, the LAOP and the APC, the beginning of which is set by the Constitution of the Republic of Bulgaria. Point **2.1.** concludes that Art. 120, para. 1 of the Constitution implicitly includes in its content indirect review of the legality of acts and actions of administrative authorities. Point **2.2.** analyses the provision of Art. 17, para. 2 of the CivPC, which directly governs the court's power to rule incidentally on the validity or legality of administrative acts. The first and second sentence of Art. 17, para. 2 CivPC are treated as two separate hypotheses in which the relevant "pairs" of legal antonyms are *validity/nullity* and *legality/illegality.* The provisions of Art. 302 and Art. 229, para. 1, p. 4 of the Civil Procedure Code are also examined. Point **2.3.** analyses the provision of Art. 16 in *the General Part* of the Penal Code. It is noted that a number of provisions are included in the Penal Code, *Special Part*, which implicitly contain in themselves the necessity to carry out such a review in order to establish the presence of all elements of an objective and subjective aspect of the composition of a crime. Such are the provisions of Art. 282, para. 1, Art. 282a, Art. 272, para. 1, Art. 277, Art. 279, Art. 280, etc. of the Penal Code, contained in Chapter Eight, Section I and Section II; the offence of bribery provided for in Chapter Eight, Section IV – Art. 301, para. 1 to para. 3 and Art. 304, para. 1 to para. 2 of the Penal Code. The exercise of indirect judicial review in criminal proceedings may also result from the application of a legal norm with a blanket disposition, such as Art. 136, Art. 230, para. 1 and para. 4, Art. 355, Art. 356 of the Penal Code. Point **2.4.** analyses the provisions of Art. 25 and Art. 31 of the LAOP. It is pointed out that indirect review in

administrative penal proceedings is also carried out in the case of Art. 52, para. 4, Art. 53, para. 2 and Art. 54, para. 1, p. 7 of the LAOP. Indirect judicial review of the act finding an administrative offence is also exercised in the event of an appeal against the penal decree or the resolution terminating the administrative penal proceedings on the basis of Art. 58e, para. 1 and para. 3 LAOP. Point **2.5.** points out that there is no explicit provision in the APC providing for the possibility of indirect judicial review. However, there are legal norms in the APC which give reasons for the opposite conclusion. Point **2.5.1.** analyses the provision of Art. 5 entitled "Application of the higher-ranking normative act". The way in which this provision is formulated leads to the conclusion that it may be relied on both by the court when deciding an administrative case and by the relevant administrative authority when ruling on a request made to it. Point **2.5.2.** notes that the APC provides for at least two provisions which implicitly contain the possibility of indirect judicial review: *one* under Art. 204, para. 3 APC (in conjunction with Art. 128, para. 1, p. 6 APC) and the *other* under Art. 299, para. 1 APC (in conjunction with Art. 128, para. 1, p. 7 APC). **In the first** case, establishing the illegality of the act is a mandatory stage of the court's activity in examining and resolving claims. **In the second** case, two relevant questions are raised: Is the ordinance of the enforcement authority an administrative act? Does the prior annulment of the ordinance, act or omission of the enforcement authority constitute a prerequisite for the admissibility of the action under Art. 299, para. 1 of the APC? **Section 4** deals with the conditions for exercising indirect judicial review. In order for such review to be carried out, two conditions must be met cumulatively: 1. to be an administrative act and 2. the question regarding its legality to be a preliminary question for the outcome of the respective process. **§1** of Section 4 deals with the first of the above conditions – to be an administrative act. For the purposes of the dissertation study, the definition of an individual administrative act (IAA) set out in Art. 21, para. 1 to para. 4 of the APC has been used to distinguish those subtypes of individual administrative acts that are relevant to the study. It is pointed out that *the constitutive* IAAs are of fundamental importance for the purposes of the dissertation research due to the fact that their legal effect is manifested in the creation of new legal situations. The so-called *declaratory* IAAs under Art. 21, para. 2 of the APC are also important for the dissertation study, especially with regard to indirect judicial review in the administrative penal process. Point **1.1.** distinguishes between an administrative act and a judicial act, concluding that the element that categorically distinguishes a judicial act from an administrative act is res judicata. Point **1.2.** clarifies that administrative acts

have "legal", "binding" force and enter into "formal legal force". It is emphasised that if an administrative act has entered into *formal legal force* and has therefore become *unchallengeable,* this does not mean that it has also become *unresolvable.* The latter is an expression of the *"res judicata"* of a judicial act which the administrative act does not have. Point **1.3.** clarifies that the ground for the admissibility of indirect judicial review over administrative acts is the absence of "res judicata" of the administrative act, which should be given specific expression in the present case. It is manifested in the ability of the court to assess the legality of the relevant administrative act, on the basis of which to draw conclusions about the outcome of the specific case. In this case, it is a **secondary assessment** of the legality of an administrative act and not an appeal to the court with a view to obtaining a judgment annulling or amending the contested act.[7] Point **1.4.** deals with the question of the admissibility of indirect review with regard to administrative acts that have been subject to direct judicial review. The provisions of Articles 177, para. 1, 183 and 193 of the Administrative Procedure Code have been analysed successively. Point **1.4.1.** provides an answer to the question raised at the outset, namely: Is indirect review admissible in respect of administrative acts which have been the subject of direct judicial review? The answer to this question depends on the type of decision taken to challenge the (individual, general or statutory) administrative act concerned. **§2** of Section 4 deals with the second of the above conditions, namely the question of legality being prejudicial to the outcome of the relevant process. As regards the concept of *a "prejudicial question"* concerning the legality of an administrative act, it is noted that this is such a preliminary issue on which the court must express an opinion in the grounds of its decision in order to be able to rule on the disputed subject matter of the proceedings. **Section 5** discusses the scope of indirect judicial review over administrative acts. **§1** of Section 5 states that administrative acts are object to indirect judicial review, and the legality of the administrative act concerned is subject to review. **§2** of Section 5 deals with the question of the admissibility of indirect judicial review over administrative acts issued on a discretionary basis. The issue of judicial control over discretionary powers is examined from the perspective of direct review, from which conclusions are also drawn about indirect review. Point **2.1.** deals with the nature and functions of discretionary powers. Introductory remarks on the control over discretionary powers are set out in point **2.2.**, a distinction is made in point **2.2.1.** between

[7] Staynov, P. Judicial Review of Courts in the Field of Administration. – Society and Law, 2015, Nos 5 and 6, 105-119 and 111-130.

the appropriateness of the administrative act and the conformity of the administrative act with the purpose of the law, and in point **2.2.2.** the limits of discretionary powers are outlined as internal and external ones. Point **2.2.3.** discusses the types of controls regarding discretionary powers. Point **2.3.** sets out a general statement on the judicial review of discretionary powers, stating that this is a review of legality. The provision of Art. 169 of the APC is analysed, noting that where the subject matter of an appeal to the court is an administrative act, issued in a discretionary manner, the judicial review takes place on two "levels". At *the first level*, the court should verify whether the administrative authority had discretionary powers. If the authority did not have discretionary powers, the administrative act issued by it would have to prove to be materially unlawful. In the event that the administrative authority had discretionary powers, the review of the court continues at the *next level*, namely: whether that authority has complied with the requirement of legality of administrative acts. Point **2.4.** contains conclusions on the scope of judicial review and the admissibility of indirect judicial review over the exercise of discretionary powers. It is stated that administrative acts issued under discretionary powers may be challenged before the court as unlawful, but not as inappropriate. It is stated that judicial review over discretionary powers is not only permissible, but should be carried out in depth. It is emphasized that the control remains such for legality also in the cases where the court must verify whether the legal regulation of the very choice by the administrative body on the grounds of Art. 4, para. 2 and Art. 6, para. 2, 3 and 4 of the APC has been complied with. The verification of compliance with this regulation is necessary in so far as the court has to establish whether the administrative act issued under discretionary powers is in line with the purpose of the law, in order to be able to rule on its legality and, if necessary, annul the act as unlawful on the basis of Art. 146, para. 5 of the APC. It was concluded that the above rules should also apply to the indirect judicial review of administrative acts issued on a discretionary basis, and in this review the court will express an opinion on the legality in the grounds of its decision. **§3** of Section 5 deals with indirect judicial review of the legality of regulatory administrative acts (RAAs). Point **3.1.** provides a brief analysis of the concepts of *"administrative normative act"* and *"regulatory act"*. It is pointed out that for the purposes of scientific research the two concepts will be used as synonyms. Point **3.2.** sets out some of the more significant views expressed in legal literature on indirect review over RAAs. The opinion of Vasil Petrov, justifying the admissibility of the indirect review of the procedural legality of RAAs, is examined in more detail. It is stated that the review of the legality of the relevant regulatory act

should cover all its aspects, and indirect review of such acts may also be exercised by the court of its own motion. Point **3.3.** sets out the case-law on indirect review of the legality of RAAs. Point **3.3.1.** deals with case-law relevant to the exercise of indirect review over these acts in the administrative process. It is pointed out that in the administrative process indirect judicial review of such acts may be exercised in principle in two cases: *in the review and annulment proceedings,* when challenging an individual administrative act whose immediate legal basis is the relevant statutory administrative act, and *in the claim proceedings,* when examining an action for compensation against the State or a municipality for damage caused by a null and void regulatory act. Point **3.3.2.** deals with case-law relevant to the exercise of indirect review over RAAs in civil proceedings. Point **3.3.3.** deals with case-law relating to the exercise of indirect review over RAAs in criminal and administrative penal proceedings. **§4** of Section 5 deals with the question of the limits of indirect judicial review in the light of the type of invalidity of administrative acts. Preliminary remarks relating to the illegality and types of invalidity of administrative acts are made in point **4.1.** Point **4.2.** deals with the issue of indirect judicial review over null and void administrative acts. Point **4.3.** deals with the issue of indirect judicial review of voidable administrative acts. It is stated that, in the exercise of such a review over voidable acts, the scope of the incidental review of legality should include the substantive legality of the administrative act concerned. **Section 6** deals with the powers of the court in the exercise of indirect review over administrative acts and the binding force of the incidental judicial assessment of legality, including whether its legal effect extends beyond the specific case. **§1** of Section 6 deals with the grounds for proceeding to indirect judicial review, namely: a plea of illegality and on one's own initiative (ex officio). **§2** of Section 6 deals with the question of what constitutes the exercise of indirect judicial review of the legality of administrative acts. It is stated that, irrespective of the result of the indirect review carried out, the judicial assessment of the legality of the act at issue is relevant only for the specific case under consideration. **§3** of Section 6 deals with the question of the binding force of the incidental judicial assessment of the legality of the administrative act and the possible extension of its legal effect beyond the framework of the specific process. Point **3.1.** deals with the issue of the binding force of the grounds of a judicial decision and the issue of the so-called "principal, decisive grounds". In point **3.1.1.,** concerning the question whether the grounds of the judicial decision have the force of res judicata, the views expressed in legal literature are grouped in two directions. According to the one direction, the grounds are not part of the judicial decision

and do not have the force of res judicata. According to the other, the grounds form part of the judicial decision and therefore have the force of res judicata. In point **3.1.2.,** the question concerning the so-called "principal, decisive reasons" is examined in the light of the case-law. In earlier case-law, the dominant view was that the so-called decisive, substantive, principal grounds, containing findings on legally relevant facts, had the force of res judicata. More recent case-law maintains that only the finding relating to the right at issue has the force of res judicata, but there are also court decisions in which the court accepts the thesis of the so-called principal, decisive grounds. Point **3.2.** deals specifically with the question of the binding force of the incidental judicial assessment of legality and whether its legal effect extends beyond the framework of the specific process. It is stated that, since the statement of reasons does not form part of the judicial decision, the incidental assessment of legality reflected in the statement of reasons does not have the force of res judicata. However, the opinion was expressed that, since the grounds are an integral part of the content of the judgement, where the illegality of an administrative act is provided as an element of the objective side of the criminal composition, the incidental judicial assessment of legality of the act should have the force of res judicata. A private hypothesis is also considered, which covers the cases in which an individual administrative act is issued on the basis of a regulatory act that served as its legal basis. It is stated that the court's reasoning concerning a finding of contradiction between the regulatory act being assessed incidentally and a higher-ranking legislative act, which is essentially an interpretation of rules of law, could be regarded as having the force of res judicata and binding force. That statement of reasons would have a preliminary significance when considering cases concerning the challenge of other individual administrative acts issued on the basis of the same legal norm of the sublegislative regulatory act found to be unlawful by way of indirect judicial review. Point **3.2.6.** concludes that indirect judicial review represents *a kind* of judicial activity of the court. **Section 7** discusses indirect *administrative* review of the legality of administrative acts (incidental review of legality, carried out *by administrative order*) as a specific control activity carried out by administrative authorities in the exercise of their powers.

CHAPTER TWO

Chapter Two of the dissertation is entitled *"Indirect Judicial Review in Bulgarian Jurisprudence"* and consists of four sections. In Chapter 2 indirect judicial review is presented "in effect". Section **1** deals with indirect

judicial review in civil proceedings. **§1** of Section 1 presents the specific cases of indirect review over administrative acts in civil proceedings, namely: **1.1.** Claims for protection of the right to property brought by/against the state (municipality) or in a dispute between private persons – when one party to the case derives his/her rights (property or other, limited rights in rem) from an administrative act contested by the other party. **1.1.1.** Indirect judicial review of a court decision under Art. 14, para. 3 of the Agricultural Lands Property and Usage Act and a court decision of an administrative court exercising direct judicial review of an administrative act during the restitutory procedure under the Act. **1.1.2.** Indirect judicial review of orders and court decisions to revoke the expropriation under Art. 4 of the Law on Restoration of Ownership of Certain Expropriated Properties under the Law on Territorial and Urban Planning, the Law on Planned Development of Settlements, the Law on the Development of Populated Areas, the Law on State Property and the Law on Property. **1.2.** Claims for the return of something received without a reason or in view of an unfulfilled or lost reason. **1.3.** In the case of so-called mixed factual compositions with civil law consequences, where the relevant administrative act is a mandatory component for the occurrence of civil law consequences. **§2** of Section 1 presents other, special cases related to indirect judicial review of administrative acts in civil proceedings. **Section 2** deals with indirect judicial review in criminal proceedings. **§1** of Section 2 presents the specific cases of indirect review over administrative acts in criminal proceedings, namely: **1.1.** Under the terms of Art. 16 of the Penal Code. **1.2.** Cases in which the formation of a conclusion about the commission of a criminal offence provided for in the Penal Code requires an assessment of the legality of administrative acts. **1.3.** Section IV of Chapter Eight of the Penal Code, which regulates the criminal offence of bribery, has been analysed. **1.4.** Compositions of the Special Part of the Penal Code, whose executive act is related to violation or non-execution of acts or actions of representatives of the power/public have been analysed. **§2** of Section 2 presents other, special cases related to indirect judicial review of administrative acts in criminal proceedings. **Section 3** deals with indirect judicial review in the administrative penal process, including: **3.1.** Under the terms of Art. 25 of the LAOP. **3.2.** Under the terms of Art. 31 of the LAOP. **3.3.** Cases of appeals against penal decrees, in which the legality of the AUAN should be assessed. **3.4.** Under the terms of Art. 52, para. 4, Art. 53, para. 2 and Art. 54, para. 1 of the LAOP. **3.5.** Cases relevant to the exercise of indirect review in the administrative penal process, examined in the case-law. **Section 4** deals with indirect judicial review in the administrative process. **§1** of Section 4 sets out the indirect review

exercised in the review and annulment proceedings. **§2** of Section 4 sets out the indirect review exercised in the claim proceedings, namely: **2.1.** Cases of claims for damages resulting from unlawful acts of administrative authorities under Chapter XI of the APC, in particular under the terms of Art. 1, para. 1 of the Law on the Liability of the State and Municipalities for Damages in conjunction with Art. 204, para. 3 of the APC. **2.2.** Cases of claims for damages from enforcement, in particular under the terms of Art. 299, para. 1 of the APC, in conjunction with Art. 128, para. 1, p. 7 of the APC.

CHAPTER THREE

Chapter Three of the dissertation is entitled *"Indirect Judicial Review in Other Legal Systems"* and consists of four sections. Chapter 3 deals with the manifest forms of indirect judicial review in other legal systems. **Section 1** deals with indirect judicial review in Western, Central and Northern Europe. **§1** of Section 1 sets out indirect judicial review in the Federal Republic of Germany, including: **1.1.** Distinction between individual administrative acts and administrative rules of general application. **1.2.** The specific role of the *"Iura novit curia"* principle in the Federal Republic of Germany. **1.3.** The question of the exercise of indirect *administrative* control. **§2** of Section 1 sets out indirect judicial review in the French Republic. **§3** of Section 1 sets out indirect judicial review in the Kingdom of Spain, including: **3.1.** Direct and indirect judicial review of administrative measures. **3.2.** Plea of illegality (excepcion de ilegalidad). **3.3.** Indirect challenge of by-laws (recurso indirecto contra reglamentos), including: **3.3.1.** The so-called "question of illegality" (cuestion de ilegalidad). **§4** of Section 1 sets out indirect judicial review in the Kingdom of the Netherlands. **§5** of Section 1 sets out indirect judicial review in the Kingdom of Belgium. Indirect judicial review in the Czech Republic is presented in **§6** of Section 1. **§7** of Section 1 sets out indirect judicial review in the Kingdom of Sweden, including: **7.1.** Indirect review of general administrative acts. **7.2.** Indirect review of individual administrative decisions. **Section 2** deals with indirect judicial review in South-Eastern Europe and on the Balkan Peninsula. Indirect judicial review in Romania is presented in **§1** of Section 2. Indirect judicial review in the Republic of Serbia and the Republic of Croatia is presented in **§2** of Section 2. **Section 3** deals with the so-called "collateral challenge" in England and Wales. **Section 4** deals with the so-called "plea of illegality" under Article 277 TFEU.

CONCLUSION

In the conclusion of the dissertation are outlined the most important conclusions of the scientific research. The final part of the dissertation is presented in the next chapter of this abstract.

III. MAIN CONCLUSIONS OF THE DISSERTATION

The dissertation concludes that indirect review of the legality of administrative acts is a significant and effective legal means both to ensure legality in the activities of administrative authorities and to protect the rights and legitimate interests of individuals.

The scientific study found that, by its legal nature, indirect judicial review is a kind of judicial activity of the court, the subject matter of which is the question of the legality of an administrative act, which is considered and decided as an administrative law dispute in the course of the proceedings pending before the court (civil, criminal, administrative penal or administrative). The resolution of this administrative dispute through indirect review, in the course of the proceedings pending before the court, is expressed as an opinion in the grounds of the court decision, is relevant for the correct resolution of the dispute in the specific case, but in no way reflects and does not affect the legal existence of the incidentally assessed act.

From that perspective, it could be concluded that indirect (incidental) review has a more limited legal effect than direct judicial review. That is true, at least as regards the fact that, in the context of a direct review, the court rules on the legal fate of the act in the operative part of the decision, having the power to annul or amend the contested administrative act, or the court's ruling on the lawfulness of the act also has the force of res judicata. In an indirect review, the court "rules" on the lawfulness of the act assessed incidentally by expressing an opinion on that point in the grounds of the decision, which do not, however, have the force of res judicata. Moreover, the court does not have the possibility to annul the act assessed incidentally, but can only ignore it, disregard it when deciding on the specific case. And when it comes to a normative administrative act the court can only leave it unapplied in the specific case.

In this regard, it could be accepted what was stated in Decision No. 425 of 21 June 2022, delivered in the commercial case No. 20211001001206 on the 2021 inventory of the Sofia Court of Appeal, V c.c., that: "*Incidental review ... of the validity and legality of administrative acts is the* ***surrogate*** *of direct*

judicial review carried out by the administrative courts under Article 126 et seq. of the APC.". By "surrogate" in this case, it is probably meant that incidental review is an inadequate substitute for direct judicial review. In the sense that incidental review does not fully and completely have the qualitative characteristics of direct judicial review. In that regard, the dissertation clarifies that indirect judicial review takes place in the context of a "quasi-trial", that is to say, a "similar to", "non-genuine" process. The reason is that indirect judicial review, as a kind of judicial activity, takes place in the context of the main proceedings pending before the court, in the course of which the court, without ruling on the legal fate of the administrative act, takes a position on its legality, as expressed in the grounds of the decision. That is the question of indirect review, but only "on the surface".

Entering into the legal nature of indirect review, however, it can undoubtedly be concluded that it is not an inferior substitute for direct judicial review, nor is it an alternative remedy. Indirect judicial review is an independent and effective legal means of verifying and ensuring the legality of administrative acts, having its own significance and effectiveness, the scope of which even exceeds that of direct judicial review. Firstly, as explicitly stated in Decision No. 2 of 14 February 2023 of the Constitutional Court of the Republic of Bulgaria in Case No. 1/2022, the constitutional basis for the indirect review of the legality of acts of the administration, which falls outside the scope of direct review under Art. 120, para. 2 of the Constitution, through which the principle of the rule of law under Art. 4, para. 1 of the Fundamental Law is manifested, is the general provision of Art. 120, para. 1 of the Constitution. Secondly, such control may be exercised over all types of administrative acts, irrespective of the authority which issued them, including normative administrative acts and acts issued in a discretionary manner. More than that. Even if a certain category of acts were excluded from direct judicial review, they could be subject to an incidental review. In the third place, an indirect review may be carried out not only in civil proceedings, but also in criminal, administrative penal and administrative proceedings, and the judge concerned has the power to carry out such a review, irrespective of which court of first instance has general jurisdiction over the specific administrative act. In the fourth place, an indirect review may also be carried out after the expiry of the time-limits for challenging the administrative act directly, provided that the administrative act has not been subject to direct judicial review (although exceptions are permitted). In this case, the provisions of Art. 17, para. 2, second sentence and Art. 302 of the Civil Procedure Code, respectively Art. 177, para. 1, Art. 183 and Art. 193, para. 2 of the Administrative Procedure Code should

be observed, but such restrictions do not apply to criminal proceedings. The judge in the specific criminal case could exercise an indirect review if the question of the legality of an administrative act is an element of the objective side of the criminal composition, regardless of whether that act has been subject to direct judicial review and regardless of its outcome. Fifthly, unlike a direct review, in which the court must be seised of an application for a ruling on the lawfulness of the contested administrative act, an indirect review may be carried out by the court, in addition to a plea of illegality, of its own motion where it considers that the issue of the lawfulness of an administrative act determines the outcome of the specific case. The ex officio exercise of such control should be particularly pronounced when it comes to the legality of a normative administrative act that served as a legal basis for the issuance of subsequent acts, as well as in criminal proceedings, where the question of the legality of the act could form an integral part of the activity of establishing the existence of a criminal act. Sixthly, indirect review may be carried out both for the validity/nullity and for the legality/illegality of the act assessed incidentally, and specifically in the criminal and administrative penal process the determination of the type of nullity is not as important as in the civil and administrative process. Seventh, in the context of an indirect review, the court takes a position on the lawfulness of the act in question in the grounds of the decision and, therefore, its position on that matter does not have the force of res judicata, which is relevant only to the parties to the specific case. An exception is observed in criminal proceedings, in which the grounds form an integral part of the content of the judgement, and therefore they have similar force.

However, the position expressed in the grounds of the decision, as a result of the indirect review of the lawfulness of the administrative act, has a significant legal effect. On the one hand, it ensures that a correct and reasoned decision is given. More than that. The Court cannot rule on the substance of the dispute until it has carried out an incidental assessment of the lawfulness of the administrative act determining the outcome of the case in question. Otherwise, it risks basing its decision on an unlawful (possibly invalid) act. The existence of such a possibility is impermissible not only, but above all, in criminal proceedings, given the particular value of rights which could be limited or impaired when a criminal conviction is handed down. On the other hand, although expressed as a position in the grounds of the judicial decision, the opinion of the court on the legality of an administrative act is capable of seriously undermining the presumption of legality of that act, especially as regards normative administrative acts. Although such an opinion is binding only on the parties to the specific case, there is nothing to prevent the court,

when examining a subsequent case in which the legality of that same act is relevant to the decision on the merits, from noting that its illegality had previously been found incidentally in such a case, which could serve as an additional argument for the incidental ruling on the legality of that act in the subsequent case. In addition, it is possible that the incidental finding that an administrative act is unlawful may give rise to the review and, where appropriate, the withdrawal of that act by the authority which adopted it. As regards regulatory acts, an incidental finding that such an act is unlawful may act as a catalyst for the initiation of numerous actions challenging the legality of subsequent acts, the legal basis of which is the regulatory act in question.

The institute of indirect review of the legality of administrative acts is not limited solely to indirect (incidental) *judicial* review, but also covers similar activities carried out by the administrative authorities in the exercise of their powers, referred to in the scientific study as "indirect *administrative* review of the legality of administrative acts" or "incidental review of legality, carried out *by administrative order*". It could manifest itself in the procedure for issuing administrative acts, in the procedure for challenging administrative acts by administrative means, as well as in the enforcement phase. Particularly important is the role of indirect *administrative* review in administrative penal proceedings, in which the outcome of the assessment of the legality of the act establishing an administrative offence, carried out by the administrative penal authority, is decisive for the way in which the proceedings should be concluded – whether the proceedings should be terminated by a reasoned resolution or a penal order should be issued.

The above shows that indirect (incidental) review of the legality of administrative acts by the courts or administrative authorities is a significant and effective legal means of verifying and establishing the (non-)lawfulness of administrative acts, which has an independent place in the Bulgarian legal reality. Indirect review has been the subject of analysis in numerous scientific publications, which has helped to develop legal doctrine. It also manifests itself in action through its exercise by judges in civil, criminal, administrative penal and administrative proceedings, as well as in the relevant proceedings before the administrative authorities. However, while in legal literature its value, efficiency and significant role played in specific administrative and judicial proceedings have been revealed and confirmed, in case-law it can be said that the exercise of indirect (incidental) review takes place with caution and is rather rare. Although, following the Decision No. 2 of 14 February 2023 of the Constitutional Court of the Republic of Bulgaria in constitutional case No. 1/2022, the courts are much more convincing in their arguments for allowing

indirect judicial review, referring to what is stated in the grounds of the aforementioned decision.

Judges appear to be far more inclined to refuse an indirect (incidental) review than to give reasons in support of its admissibility. The main argument against the exercise of such a review, which is raised primarily in criminal and administrative cases, is the absence of an express provision in the Criminal Procedure Code and the Administrative Procedure Code governing the possibility and conditions for its exercise. Although the APC contains several provisions allowing for indirect review in both annulment and claim court proceedings. As regards the criminal procedure, there is also no need for such a provision in the CPC, since, in criminal cases, judges have probably the broadest powers to carry out such a review, and this on their own initiative, irrespective of whether the act assessed incidentally was subject to direct judicial review. In criminal proceedings, there are no provisions analogous to Art. 17, para. 2 and Art. 302 of the Civil Procedure Code that limit the powers of judges with regard to the type of illegality on which they could adjudicate incidentally or provide for the binding force of a decision on an administrative dispute for the criminal court. More than that. In criminal proceedings, the possibility of conducting an indirect review is an inherent part of the power of the judge to establish the commission of a criminal act and the imposition of a corresponding penalty when the question of the legality of an administrative act is raised as an element of the objective aspect of the composition of the crime concerned.

There is another trend, in which judges first note that indirect review is inadmissible, but still, next, carry out one, rather as an exception, in the specific case. In other cases, without expressly stating that they are carrying out the indirect review, judges are in fact carrying out such a review. Unfortunately, there are not a few cases in which the courts directly refuse to exercise indirect review even on the validity of the administrative act, although there are grounds for allowing it. However, if indirect review is allowed, the courts put forward very diverse grounds to justify its implementation, ranging from the statement in the grounds of the abovementioned Decision No. 2 of 14 February 2023 of the Constitutional Court of the Republic of Bulgaria in constitutional case No. 1/2022, through the subsidiary application of Art. 17, para. 2 of the Civil Procedure Code, to the application of the principles of legality and truthfulness and the ex proprio motu principle. There are also individual cases in which the court finds that express legal authorisation is not necessary for the exercise of indirect judicial review. Although only the Civil Procedure Code provides for an express provision governing the possibility of adjudicating incidentally on

the validity and legality of administrative acts, the case-law in civil matters relevant to the application of Art. 17, para. 2 of the Civil Procedure Code is also inconsistent, which is also largely due to the different meaning used when interpreting the concepts of "lawfulness" and "participant in the administrative procedure for its issuance and appeal" in the aforementioned provision.

A separate chapter of the dissertation also provides an overview of indirect judicial review in foreign legal systems, as well as of the so-called "plea of illegality" under Art. 277 TFEU in the case-law of the Court of Justice, the manifestations and scope of which reflect the specificities of the legal reality of different countries, respectively the specificities of EU law. Obviously, the institute of indirect review of legality is well known and manifests itself not only in Bulgarian legal doctrine and case-law, but has also been studied, analysed and applied in practice in foreign legal systems. While the same should necessarily be tailored to the specificities of the specific legal reality, there is nothing to prevent good practices from foreign experience on this issue from being selected. Thus, the institute of indirect judicial review in Bulgarian legal theory and practice would continue to develop and improve.

In the course of the research, the following **proposals *de lege ferenda*** were made to improve the legislation, namely:

1. In the Criminal Procedure Code, Part One "General Rules", Chapter Two "Basic Principles", **Article 18**, entitled "Immediacy", a **second paragraph** should be provided, which reads as follows: *"**Art. 18**... (2) The court shall have jurisdiction to assess the legality of administrative acts where the outcome of the criminal case before it depends on such verification."*.

2. In the Administrative Procedure Code:

2.1. In **Art. 5, para. 1**, a **second sentence** should be provided, which reads as follows: *"**Art. 5** (1)... The same shall apply where it is established that a substantial breach of administrative rules of procedure was committed when the relevant regulatory act was issued."*.

2.2. In Title Three "Proceedings before a Court", Chapter Nine "General provisions", a new provision should be laid down, namely: **Article 130a,** entitled *"Jurisdiction in preliminary matters",* which reads as follows: *"**Art. 130a** (1) The administrative court having jurisdiction over the relevant administrative case shall have jurisdiction to rule incidentally on the legality of an administrative act which is relevant to the resolution of the case, irrespective of the authority which issued it and the court having jurisdiction over that act. (2) The court shall establish incidentally the nullity of an administrative act, regardless of whether it is subject to judicial control. (3) The court may establish incidentally the substantive illegality of an*

administrative act which has not been subject to judicial review. (4) Except in the cases referred to in paragraph 3, the court may not establish incidentally the voidability of an administrative act, except where such an act is opposed to a party to the case who was not a participant in the administrative proceedings for its issuance and appeal.".

2.3. The provision of **Art. 300** should include a **second sentence**, which reads as follows: *"**Art. 300**... The unlawfulness of the ordinance, act or omission of the enforcement authority shall be established by the court before which the action for damages is brought.".*

2.4. A provision should also be adopted, providing for the possibility of carrying out an indirect *administrative* review in administrative appeal proceedings, at least as regards an incidental finding that an administrative act is **null and void**.

From the research conducted in the dissertation on the indirect review of the legality of administrative acts, it is concluded that it is an independent legal institute with its own significance, efficiency and mission in Bulgarian legal reality. It should be further developed and improved, also taking into account good practices from foreign experience on this issue. Its part in the modernisation of administrative procedures before administrative authorities and in the development of case-law on the issue of the exercise of indirect (incidental) review in civil, criminal, administrative penal and administrative process is expected to be increasingly relevant in the future.

The aim of the dissertation is to present the essential characteristics and the main manifestations of the indirect judicial review of the legality of administrative acts, including its manifestations in foreign legal systems, thus the dissertation served as a useful basis for subsequent studies and analyses.

IV. AUTHOR'S REFERENCE ON SCIENTIFIC CONTRIBUTIONS

The scientific contribution of the dissertation may be identified in several directions, namely:

- Particular attention is paid to the admissibility of indirect judicial review of administrative acts issued in the exercise of discretionary power, which remains that of legality and that of the exercise of discretionary power in accordance with the purpose of the law. The argument is substantiated that in cases where the court has to verify whether the legal regulation of the choice itself by the administrative authority has been complied with, on the basis of Art. 4, para. 2 and Art. 6, para. 2, 3 and 4 of the APC, the judicial review goes within the limits of the choice of the authority itself, but only to the extent

necessary to control the exercise of discretionary powers in accordance with the purpose of the law. Moreover, if the incidentally assessed act is found to be inconsistent with the purpose of the law, it should be declared unlawful and therefore ignored.

- It is well-founded that a *special case of indirect judicial review* is provided for in respect of regulatory administrative acts. It is expressed in the verification of the court in the specific case whether the normative administrative act, which served as a basis for the issuance of the contested individual or general administrative act, complies with the normative acts of a higher degree. On the other hand, in the case of those acts too, the examination may be carried out in the same way as in the case of individual administrative acts, that is to say, in respect of compliance with the requirements of legality. It is stated that this so-called *dual regime* of incidental judicial review of the by-laws is due to their special legal nature, combining at the same time characteristics of both administrative and regulatory acts. It has been argued that a request to carry out an indirect (incidental) review constitutes a *legal standard* (“*where... a regulatory act conflicts with a higher-level legislative act”),* the implementation of which in each specific case must be verified and justified by the court.

- Specifically with regard to the indirect judicial review carried out in criminal proceedings, given the specific nature of the final act concluding the criminal proceedings, a justified concludion has been made, that *the grounds of the judgment have the force of res judicata in so far as they provide information on the precise nature of the act committed, which is the actual subject matter of that force*. That conclusion is based, first, on the hypothesis put forward by Prof. Stalev[8], according to which part of the grounds could have the force of res judicata. In the present case, the operative part of the judgment does not include all the elements giving concrete expression to the offence, but some of them (with the objective/subjective element “(un)lawfulness of the act”) appearing in the grounds of the judgment. In so far as the force of res judicata relates to the fact of the act committed and the particulars of that act are set out in the statement of reasons, the scientific study concludes that, in a specific judgment, the force of res judicata “sees” its subject-matter as formulated in the statement of reasons for that judgment. On the other hand, it is stated that, where the element of “unlawful administrative act” is also included in the constituent elements of the offence, the existence of the same should be established by means of an indirect review of the administrative act, the outcome of which is

[8] See Stalev, J., Res Judicata in Civil Proceedings ..., p. 238.

reflected in the grounds of the judgment. Since *the grounds form an integral part of the content of the judgment*, it has been concluded that, where the unlawfulness of an administrative act is envisaged as an element of the objective aspect of the criminal composition, the court's incidental assessment of the legality of the act (should) have the force of res judicata.

- In cases where an individual administrative act was issued on the basis of a regulatory act that served as its legal basis, an attempt was made to justify a hypothetical possibility. Where the administrative act assessed incidentally is found to be unlawful on the ground of substantive illegality, the grounds relating to the incidental assessment shall be given a preliminary significance in cases concerning the challenge of other individual administrative acts issued on the basis of the same legal norm of the regulatory act recognised as unlawful by indirect judicial review. This hypothetical possibility is justified by the fact that, since the court assesses the legality of the regulatory act in the grounds of the decision, their content will be the interpretation of legislative acts of different degrees and the legal conclusion on the existence or absence of contradiction between legislative acts with different legal force. However, the operative part of the decision cannot be understood in isolation from its reasoning. Consequently, as regards the reasoning of the court on the finding of a contradiction between the regulatory administrative act being assessed incidentally and a higher-ranking legislative act, which are essentially an interpretation of legal rules, it is hypothetically concluded that they enter into force and are binding in nature. Moreover, the subjective limits of the legal force of those grounds should be extended to all persons who are the addressees of individual administrative acts issued on the basis of the *same legal norm* of the regulatory act held to be unlawful.
- A well-founded conclusion is drawn that indirect judicial review is ***a kind*** *of judicial activity of the court* and at the end of Chapter One of the scientific study is presented a summary definition of indirect judicial review, namely: *Indirect judicial review is* ***a kind of*** *judicial activity of the court, which takes place in the context of a"quasi-trial", the subject matter of which is the question of the legality of an administrative act which determines the outcome of a particular case, which is considered and resolved as an administrative dispute in the course of the proceedings pending before the court, but in the context of the so-called "quasi-trial", the answer to which is reflected as a position in the grounds of the judicial decision and is relevant to the proper resolution of the dispute in the specific case.*
- Special attention is paid to the so-called indirect *administrative* review of the legality of administrative acts (or incidental review of legality,

carried out *by administrative order*), indicating the possibilities for its exercise in administrative and administrative penal proceedings and highlighting its importance.

- The issue of indirect judicial review in Bulgarian jurisprudence is discussed in detail, citing and analysing a variety of case-law relevant to the exercise of such review in civil, criminal, administrative penal and administrative proceedings. In this regard, with regard to each of the three types of process, both typical cases and other, special cases related to the exercise of such control over administrative acts are indicated.
- The scientific study also presents indirect judicial review in other legal systems, including indirect control in western, central and northern Europe, in south-eastern Europe and on the Balkan Peninsula, the so-called "collateral challenge" in England and Wales, and the so-called "plea of illegality" under Article 277 TFEU. In this regard, numerous provisions of foreign law are cited, as well as jurisprudence, including that of the Court of Justice of the EU.
- In the dissertation there are many references to foreign legal doctrine and case-law (including that of the Court of Justice of the EU) related to the comparison of Bulgarian theory and practice on the exercise of indirect judicial review with foreign experience in this field.