

Scientific review by Dr. Boyan Todorov Georgiev

Associate Professor of Administrative Law and Administrative Procedure

at the Centre for Legal Sciences of Burgas Free University

of a dissertation thesis for awarding of scientific and educational degree “Doctor”

in Area of higher education 3. Social, economic and legal sciences

Professional direction 3.6. Law

Doctoral programme: Administrative law and administrative procedure

Author: Dian Stoyanov Dunev

Topic: POWERS AND ACTS OF THE MUNICIPAL COUNCIL IN EXECUTION OF LOCAL SELF-GOVERNMENT

Scientific adviser: Prof. Bogdan Yordanov, PhD- Paisii Hilendarski University of Plovdiv

1. General presentation of the procedure

The procedure was announced at the Faculty of Law of the Paisii Hilendarski University of Plovdiv. The candidate has submitted a full set of documents, according to the regulations. The contest documents correspond to Law on the Development of the Academic Staff in the Republic of Bulgaria, Rules for application of the law for development of the academic staff in the Republic of Bulgaria and the regulations of PU "Paisii Hilendarski". The evaluation of the proposed materials in the contest shows that there are conditions for applying for the educational and scientific degree "Doctor".

The author of the dissertation work is Dian Stoyanov Dunev-PhD student at the Department of Public Law Sciences with a scientific adviser Prof. Dr. Bogdan Dragnev Yordanov from Paisii Hilendarski University. The set of materials presented by Dian Stoyanov Dunev is in accordance with the Rules for the development of the academic staff of the PU.

The doctoral student has applied three publications in referred to scientific publications.

2. Brief biographical details of the doctoral student

Dian Stoyanov Dunev is a long-time lawyer at the Bar Association of Burgas. He has a strong experience in the implementation of a procedural representation before a court in the case of the Municipal Council, including the preparation of reports, drafts of the subsequently-state normative acts and others. He is a member of the Union of Lawyers in the Republic of Bulgaria.

He graduated from the Burgas Free University with a degree in Law. He was an "assistant" in the disciplines "Administrative Law"; "Labor and Insurance Law"; "Fundamentals of Law"; "Social Legislation and Social Protection" at the University of Prof. Dr. Assen Zlatarov, Burgas.

3. Relevance of the topic and knowledge of the problem

The author himself defines the relevance of the study because of modern tendencies to decentralization, fiscal autonomy of municipal councils and the possibility of direct and indirect civic participation in the context of European policies and good local self-government and management. This raises the need for research to clarify and delineate these issues and to provide objective information for further action while reforming our administration.

The motives for the selection of the topic are dictated by the fact that this day has reached a higher level of relations between the state and the local community. Decentralization gives citizens the right to directly participate in the government of the state and to independently build the foundations of their better existence in the territory they inhabit.

4. Research methodology

The doctoral student uses a methodology of developing the dissertation work through a set of research tools, including a review of specialized scientific literature in the field of local self-government and local administration - study of reports, articles and scientific publications in connection with the studied issue; analysis of normative documents regulating the powers and acts of municipal councils; criticism of case law; systematization of data, analysis, synthesis, formulation of conclusions and summaries.

It is noteworthy that the labour is the collection of a large volume of information, which gives a field for various analyses, as well as for presenting more ideas, conclusions and suggestions *De Lege Ferenda*.

The methodology of the research is rather aimed at seeking a more complete informative overview of the problems raised in the topic of the dissertation. There is a certain imbalance between practical and theoretical conclusions, which can be explained by the practical bias characteristic of the doctoral student as an acting lawyer in matter.

5. Characteristics and evaluation of dissertation work

The dissertation is well structured. The volume required for a study of this category is respected. The subject is diserable, although so formulated it is very broad and difficult to cover both theoretically and practically. A serious list of titles in the respective area has been searched and applied.

Scientific work is focused on the powers of the Municipal Council, which are related to the implementation of local self-government. The removal and analysis of all powers considered is based on a detailed study of the current legislation, as well as cancelled; of the current case law of the Constitutional Court, the Supreme Administrative Court and the administrative courts; of the acts of the Municipal Councils of Burgas Municipality, Sofia Municipality and the Municipality of Plovdiv and of the established developments in the field of local self-government.

Chapter One is dedicated to the historical development and legal status of the Municipal Council as a body of local self-government.

The second chapter of the thesis analyses in detail the powers of the municipal council. The regulatory grounds and the scope of the powers provided for in Art. 17 and in Art. 21 Law on Local Self-Government and Local Administration, as a focus is on the subject and functional distinction between the different types of competences of the Council and their role in the realization of local self-government.

Chapter Three is entirely aimed at the acts by which the Municipal Council exercises its powers to exercise local self-government. The acts he accepts are defined as the formal expression of the will of the local community.

6. Contributions and relevance of the development to science and practice

One of the main contributions of the dissertation is the practical analysis of the present development of local self-government in Bulgaria. As a result, the author draws several conclusions that would help future reforms. Of interest is the study of the power of the Municipal Council to discuss and adopt decisions on proposals of mayors of regions and mayoralties. This is a guarantee for the participation of the territorial management bodies in the decision-making process and provides an opportunity to better present the needs of the local population. Such analysis is not found in our literature. The need to regulate this process is also emphasised, as is the need to provide additional conditions for citizens' participation in the governance of the territorial community by proposing solutions to issues of high public interest.

We will agree with the doctoral student that the regional and territorial authorities themselves are autonomous, their powers are provided for by law and they can freely exercise their rights and perform their duties. They are independent of the above central management bodies, which are only able to exercise control over their behaviour and to check the expediency and legality of their acts.

The prompting moment is the conclusions that there are gaps in the legislative in the regulation of the decisions of the municipal councils. According to the author, it's not correct Art. 21 of the Local Government and Local Administration Act, to be interpreted literally and to conclude that, since the powers listed, for example, in paragraphs 8, 9, 10, 11, 14, 15, etc., can be exercised only by means of the adoption of decisions by the local parliament, the exercise of the other powers must necessarily be objectivised by other acts of the council, whether administrative or not. Following an analysis of legal doctrine, it has been understood that decisions taken by municipal councils are both normative and non-normative acts, whereas decisions taken, for example, by the National Assembly or the Council of Ministers are only non-normative administrative acts. An original contribution is the attempt to classify the types of decisions that the municipal council's issue and to highlight the contradictions in the case law regarding their species.

Interesting is the study of the PhD student of the case law regarding the species of the type of decisions of the Municipal Council for the acquisition, management and disposal of municipal property

and for determining the specific powers of the mayor of the municipality and the mayors of districts and mayoralties under Art. 21, (1), p. 8 The Law on Local Self-Government and the Local Administration. The author concludes that it is unjustifiably controversial.

It is also important to raise the issue of internal service acts in local government. The Municipal Council, in the exercise of its powers related to the implementation of local self-government, issues internal service acts, which do not have external effect, and with them creates obligations for technically subordinate bodies or resolves concrete service issues that do not directly affect citizens and organizations. The doctoral student defines the following decisions of the Municipal Council as such acts: the decisions under Art. 21, (1), p. 1 The Law on Local Self-Government and the Local Administration, which set up standing and temporary committees and elected their members; The decisions under Art. 21, (1), p. 2 the Law on Local Self-Government and the Local Administration, which approve the number and structure of the municipal administration; The decisions under Art. 21, (1), p. 3 the Law on Local Self-Government and the Local Administration, which elected the chairman of the municipal council and the decisions under Art. 21, (1), p. 5 the Law on Local Self-Government and the Local Administration, which determines the amount of the wages of the mayors of municipalities, regions and mayoralties.

The proposed new approach in the administrative reform, aimed at the powers of the Municipal Council, may also be accepted. An attempt has been made to all be divided into several categories and analyse.

We agree that in our country, three main forms of decentralization are practiced in our country: administrative, financial and political, with scientific work mainly focused on administrative decentralization.

The author emphasizes the legal protection of the powers of the Municipal Council as an essential mechanism for guaranteeing the constitutionally established principle of local self-government - a means against unlawful intervention by the central government or other bodies in the competence of the municipal councils. The case-law analysis shows that, until disputes for competence in substance, between bodies of government and local self-government, is rare. According to the doctoral student, De Lege Ferenda requires the introduction of an additional effective mechanism for the protection of the Municipal Council powers from attempts at centralization to ensure better practical applicability of the principles of decentralization and local self-government. The main contribution is the analysis of the main forms of control over these acts - administrative control, judicial control, prosecutorial control and public control. The control of the regional governor and the mayor of the municipality is central. The author is convinced that the control that the regional governor exercises on the acts of the municipal council in accordance with Art. 45, (4) The Law on Local Self-Government and Local Administration is an administrative - a conclusion that we can hardly agree with.

However, we support the observation that the current legislation seems to rely on the good faith of the regional governor to exercise his supervisory powers, since there are no sanctions imposed to compel

him to perform this duty, and even the court is not provided with the possibility of forcing him to exercise this competence. Unlike the deadline for ruling the Municipal Council on the returned act, which is instructive, the term under Art. 45, (8) The Law on Local Self-Government and the Local Administration is preclusive, which follows that if the regional governor does not take any effect against an unlawful act of the municipal council, he will forever lose the opportunity to put it for a new consideration and as the only option remains the possibility of realizing judicial review. De lege ferenda, it is a good idea to provide for some forced methods through which the regional governor is encouraged to fulfil this obligation.

The judicial control, which is realized by the administrative courts of complaints, filed by the affected persons, a prosecutor, a regional governor or mayor, is considered in detail. The dissertation focuses on the peculiarities of local and subject matter of jurisdiction, as well as the specifics of cassation challenge. The possibility in certain cases has also been indicated for judicial control to be exercised by the common courts-for example, in disputes under the Law on Ownership and Use of the Land Lands or under the Commercial Law.

Some of the author's recommendations formulated in the dissertation are also interesting:

- proposals for improving the legislative framework.
- recommendations for a clearer demarcation of administrative and management acts and proposed models for effective control over acts of the municipal council and for improving the interaction between the municipal council, the mayor and the regional manager.
- calls to the legislature not to make any distinction between the suspension of the execution of individual and general administrative acts and the suspension of the execution of normative administrative acts in the exercise of control by the regional governor and the mayor of the municipality. The mayor of the municipality also does not have the right to return the act of the municipal council for a new discussion at the same time and to challenge it in court - it is necessary to assess which of the two actions would give by an effective result.

7. Evaluation of the doctoral student's publications

Beside the dissertation work, Dian Dunev also presents three separate publications, presented as reports of established scientific forums. The publications meet the legal requirements by being published in referred collections and carrying the necessary points for obtaining an educational and scientific degree "Doctor".

Two of the publications were incorporated to varying degrees in the dissertation work, as part of their contribution were indicated above in the review. Therefore, we will not dwell on them again,

but we will point out as a recommendation, in the future, in his participation in subsequent scientific forums, to focus on other public administration topics.

The third publication is related to the amendments to the Law on Administrative Violations and Penalties made in 2020. The emphasis is on insignificance as an important material institution in punishment. The author too uncritically accepts changes in administrative punishment, especially in the light of the subsequent practical experience, which shows that the rights of citizens and organizations are increasingly protected in our administrative-criminal process.

8. Recommendations for future use of dissertation contributions and result

Some of the critical notes and recommendations were listed here, but we briefly formulate some of them:

- the dissertation would be enriched if the author offered a more in-depth theoretical analysis of the phenomena he is examining.
- It is necessary to present the personal vision of the author, because of which more specific proposals to solve the problems under consideration will be formulated.

CONCLUSIONS

The dissertation work contains scientific and applied results and meets the requirements of the Academic Staff Development Act in the Republic of Bulgaria, the Rules for Implementation of the Academic Staff Development Act in the Republic of Bulgaria and the relevant Rules of Paisii Hilendarski. The thesis demonstrates that the doctoral student Dian Stoyanov Dunev has theoretical knowledge and professional skills in the doctoral programme "Administrative Law and Administrative Procedure" and demonstrates the qualities and skills to conduct independent scientific research. No evidence of plagiarism was found. The sources used are correctly cited and referred to in the literature.

In conclusion, I give my positive assessment of the research carried out, presented by the thesis, dissertation, results achieved, and contributions reviewed above, and I propose to the esteemed scientific jury to award the educational and scientific degree "Doctor" to Dean Stoyanov Dunev in the field of higher education 3. Social, economic and legal sciences, vocational training, 3.6 Law, doctoral programme „Administrative law and administrative procedure “.

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Prepared:

Assoc. Prof. Dr. Boyan T. Georgiev