

UNIVERSITY OF NATIONAL AND WORLD ECONOMY
FACULTY OF LAW

OPINION

by Assoc. Prof. Dr. Diana Marinova,
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REGARDING: Dissertation for the award of the educational and scientific degree of "Doctor" in the scientific specialty of Law 3.6. (Private International Law) on the topic "Prorogation of International Jurisdiction," authored by Kristian Plamenov Raychev, a PhD student at the Civil Law Sciences Department at "Paisii Hilendarski" University of Plovdiv.

I hereby present this opinion based on Order RD-21-982 dated May 12, 2023, issued by the Rector of "Paisii Hilendarski" University of Plovdiv, which appoints me as a member of the scientific jury.

1. Introduction of the PhD student

Kristian Raychev graduated in Law from "Paisii Hilendarski" University of Plovdiv in 2017. From 2019 to 2022, he has been a regular form PhD student in the field of Private International Law (PIL) at the same university. He is an assistant in PIL and a member of the Faculty Council at the Faculty of Law, "Paisii Hilendarski" University of Plovdiv.

Since 2018, he has been a lawyer and a member of the Bar Association in Plovdiv.

He is also a collaborator at the Association for Legal Aid to Consumers in Plovdiv.

He is proficient in German, English, and Russian languages.

2. Dissertation Information.

2.1. General characteristics of the dissertation.

The research consists of 219 pages, including the bibliography. The bibliography contains 31 titles in Bulgarian and 20 titles in English and German. It includes 34 sources from the EU database, opinions, foreign judicial decisions, etc. There are 247 footnotes.

The structure of the dissertation consists of an introduction, four chapters, and a conclusion.

The introduction presents the assumptions that justify the choice of the dissertation topic. It emphasizes the need for predictability in private legal relationships with an international element, which can be achieved through the choice of a court or arbitration. The relevance of the research is outlined, and the subject and objectives of the study, as well as the methods used, are defined.

Chapter One - "Sources of Law and the Arbitration Agreement as a Similar Institution" (pp. 14-33) establishes the hierarchy of legal sources - acts of the EU, international and national. Attention is given to the arbitration agreement and the similarities and differences between it and the prorogation agreement.

Chapter Two (pp. 34-77) is dedicated to the international regulation of prorogation of jurisdiction, including the Hague Convention of 2005, as well as the Lugano Convention of 2007 and their comparison with the New York Convention of 1958 and the Brussels I bis Regulation. The so-called silent prorogation is analyzed, which is further examined in depth.

Chapter Three - "Regulation of Prorogation of Jurisdiction in EU Law" (pp. 76-186) analyzes the fundamental regulations in the field of Private International Law (PIL), particularly the Brussels I bis Regulation. The silent prorogation is examined here, as well as the prorogation and its limitations in cases involving the weaker party - in insurance, consumer, and individual labor contracts. The possibilities for prorogation of international jurisdiction in alimony cases, cases related to property relations between spouses and registered partnerships, as well as inheritance cases, are also analyzed.

The last chapter, Chapter Four (pp. 186-197), focuses on the regulation of prorogation of international jurisdiction in Bulgarian legislation - the Private International Law Code. The Bulgarian doctrine on the application of the PILC is analyzed. Attention is given to the obsolescence (silent repeal) of the provisions in the PILC due to the priority application of the Brussels I bis Regulation and the Hague and Lugano Conventions.

The conclusion (pp. 198-200) presents general conclusions and indicates perspectives for the wider application of the prorogation agreement in private legal relationships with an international element. The reasons why a single concept of prorogation of international jurisdiction cannot be defined are reiterated.

2.2. Advantages of the dissertation work.

Relevance and significance of the topic, which is unquestionably dissertation-worthy.

Interdisciplinary scientific research approach.

In-depth theoretical knowledge in the researched field.

Skillful presentation of practical problems through case studies from the practice of the CJEU and individual states.

Citation of foreign sources.

Opportunity for independent thinking and providing well-founded opinions.

Good style of academic writing.

Use of primary legal sources in the research - EU Regulations, international conventions and protocols, etc.

The work possesses numerous scientific and scientific-applied contributions.

2.3. Scientific contributions.

The first monographic study on the topic in Bulgarian legal literature.

Analysis of the relationship between the prorogation agreement and the arbitration agreement, thoroughly examining and comparing the Hague Convention on Choice of Court Agreements of 2005 and the New York Convention of 1958 (pp. 28-33).

Attempt to make a comprehensive analysis of the main sources of prorogation of international jurisdiction binding Bulgarian courts, and providing specific examples for individual hypotheses regarding the application of legal sources.

In Chapter Two, a comparative analysis of the Brussels I bis Regulation and the Hague Convention of 2005, concluding that their texts are almost harmonized in the considered matter, thus eliminating the possibility of conflict.

Analysis of asymmetrical agreements (pp. 48-49), which are often concluded between traders.

Comparative analysis of the Lugano Convention of 2007 and the Brussels I bis Regulation (pp. 63-69).

Analysis of the exclusive or non-exclusive nature of the prorogation clause (pp. 69-70).

Analysis of doctrine in different countries regarding the prorogation agreement in the Brussels I bis Regulation (pp. 85 onwards), as well as Opinion 1/3 of the CJEU regarding the exclusive competence of the EU to be a party to the Lugano Convention.

Analysis of the effect of the prorogation agreement in contracts for the international carriage of goods (pp. 93), as well as the practice in international commercial transactions as a whole (e.g., the so-called "click-wrapping" agreements - pp. 103-105).

3. Scientific-applied contributions.

The findings can be practically used by participants in civil and commercial transactions when choosing a competent court/arbitration, as well as by competent Bulgarian judicial authorities and lawyers in contract drafting and negotiation.

Proposal de lege ferenda regarding the prorogation of international jurisdiction in cases related to insurance and consumer contracts - to retain only one of the concepts, either "habitual residence" or "domicile" in the regulation, in order to achieve equal and precise application of the law; the doctoral candidate also proposes another possibility - creating a definition of "habitual residence" specifically for cases involving the weaker party.

Proposal de lege ferenda regarding the possibility of prorogation of jurisdiction in cases related to divorce, legal separation, and annulment of marriage.

Proposal de lege ferenda to include an exclusion of renvoi provision in the 2005 Convention (pp. 51-52).

4. Critical remarks and recommendations.

4.1. Critical remarks.

An attempt has been made to indicate and analyze all international and supranational sources instead of focusing on specific ones. As a result, the references often have a more descriptive than analytical character.

The contributions would benefit from being systematized at the end of the presentation, in addition to their mention throughout the exposition.

The beginning of Chapter One (pp. 15-18) dedicates considerable space to well-known facts about the primacy of EU law over national law, the characteristics of primary and secondary EU legislation, and the practice of the CJEU.

The thesis about judicial practice as a source of law (excluding the CJEU practice) is debatable (p. 20).

Explanations of the essence of arbitration as a method of resolving private law disputes are somewhat lengthy (pp. 21-28); it would be better to make this description more concise.

Regarding the formal validity of the prorogation agreement - there are too many repetitions in the description of the mechanism for ensuring consensus (written form and its equivalents); the same applies to the appearance of the respondent in silent prorogation; it would be better to refer to explanations in one of the regulations.

Some CJEU practice is mentioned but without sufficient analysis; this is even more evident for the cited practice of individual states.

The conclusion contains some repetitions of what was mentioned in the introduction. Furthermore, it is too brief (pp. 199-200).

The bibliography includes few foreign doctrinal sources, and the Bulgarian sources are mainly general and theoretical.

Numerous grammatical and technical errors are present.

These critical remarks do not fundamentally alter my positive assessment of the presented dissertation work.

4.2. Recommendations.

After taking into account the critical remarks, it is advisable for the doctoral thesis to be published due to its unquestionable scientific contribution.

5. Scientific Publications.

Four scientific publications have been presented on the topic of the doctoral thesis - four conference papers and scientific readings at the "Paisii Hilendarski" University of Plovdiv, published in journals included in the national reference list of contemporary Bulgarian scientific publications with scientific review by NACID.

6. The abstract is presented in accordance with the requirements and adequately covers information about the subject, structure, volume, and content of the doctoral thesis, as well as the scientific and scientific-applicative contributions.

There is also a positive opinion from the doctoral candidate's supervisor.

The doctoral candidate has met the minimum national requirements of Development of Academic Staff in the Republic of Bulgaria Act (DASRBA) for the scientific specialty 3.6. "Law."

7. Conclusion.

The presented doctoral thesis meets the requirements of DASRBA, the Rules for its implementation, the Rules for the Development of the Academic Staff at "Paisii Hilendarski" University of Plovdiv.

The doctoral thesis has indisputable scientific contributions as well as valuable proposals for improving the legal regulation. The analysis on the topic of the dissertation and the general conclusions drawn demonstrate that the doctoral candidate possesses in-depth knowledge of the subject matter of the doctoral thesis.

Based on the statements presented, I give my categorical positive evaluation and recommend the Scientific Jury to award the educational and scientific degree of "Doctor" in the professional field 3.6. "Law" (Private International Law) to Kristian Plamenov Raychev, a regular form PhD student at the Civil Law Sciences Department at the "Paisii Hilendarski" University of Plovdiv.

June 11, 2023.

Prepared by:

Assoc. Prof. Diana Marinova.