REVIEW

for the defense of the dissertation titled "PROROGATION OF INTERNATIONAL JURISDICTION" for the award of the educational and scientific degree of "Doctor" in the field of higher education, 3. Social, Economic, and Legal Sciences, Professional field 3.6. Law, Doctoral Program: Private International Law, by Kristian Plamenov Raychev – PhD student at the Civil Law Science Department, Faculty of Law, “Paisii Hilendarski” University of Plovdiv.

by

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DEAR MEMBERS OF THE SCIENTIFIC JURY,

This review has been prepared in view of the defense of the dissertation for the acquisition of the educational and scientific degree of "Doctor" in the professional field 3. Social, Economic, and Legal Sciences, Professional field 3.6. Law, Doctoral Program: Private International Law by Kristian Plamenov Raychev – PhD student at the Civil Law Science Department, Faculty of Law, “Paisii Hilendarski” University of Plovdiv.

The procedure was initiated based on Articles 3 and 4 of the Development of Academic Staff in the Republic of Bulgaria Act (DASRBA), Articles 30, 31, and 32 of the Rules for its implementation, the Rules for the Development of the Academic Staff at “Paisii Hilendarski” University of Plovdiv, as well as the decision of the Faculty Council of the Faculty of Law at “Paisii Hilendarski” University of Plovdiv. I have been appointed as a member of the scientific jury by Order No. 21-982/12.05.2023 of the Rector of “Paisii Hilendarski” University of Plovdiv.

The submitted documents comply with the requirements of DASRBA, Rules for its implementation and the Rules for the Development of the Academic Staff at "Paisii Hilendarski" University of Plovdiv.

The procedure has been correctly followed.

I. CHARACTERIZATION OF THE PRESENTED WORK

General Description

1.1. The dissertation work is dedicated to a problem that addresses a significant aspect of the implementation and, above all, the effectiveness of the protection of private legal relationships with an international element, where the will and convenience of the parties to such legal relationships are of particular importance. The results of such a study would be useful both for Bulgarian courts and for lawyers practicing in the field of such legal relationships. Additionally, it should be noted that there is a lack of comprehensive research on this issue in our literature[1].

1.2. The structure of the work is commonly used for monographic works: it consists of an Introduction, four chapters, and a Conclusion.

1.2.1. The Introduction (pp. 9-13) outlines the significance of the topic and the relevance of the study, its subject, objectives, and research tasks. The research methods are indicated, and the innovations and practical usefulness of the work, as well as general characteristics such as volume and structure, are outlined.

1.2.2. Chapter One (pp. 14-33) is devoted to the problems of the sources of legal regulation and their hierarchy, as well as a comparison between prorogation and arbitration agreements as similar institutions.

1.2.2.1. Through the prism of the legal reality in the Republic of Bulgaria, the author briefly examines the characteristics of three types of sources of private international law: EU law (including primary law), international legal sources, and domestic/national sources. The relationship between these types of sources is

[1] I realize that in the conditions of a globalized economy and the unprecedented development of various information technologies, with an increasingly comprehensive international legal regulation and, accordingly, the presence of research on a given issue in widely accessible languages, perhaps we should reconsider the significance of a scientific study being the first or unique in Bulgarian literature. The ideological and any other barriers that existed in the past have long been eliminated, and in today's world, we should evaluate the qualities of scientific research according to universal (rather than provincial) criteria.

discussed in hierarchical and temporal order, including the possible actions of courts during the process of legal application.

1.2.2.2. In the second part of this chapter (pp. 21-33), the author compares the phenomenon under consideration, prorogation, with the possibility of resolving legal disputes through arbitration. The concise presentation contains the essential characteristics of arbitration as a method of resolving legal disputes, as well as the arbitration agreement as a basis for derogating from the jurisdiction of state courts and establishing the jurisdiction of arbitration. The author emphasizes the autonomy of the arbitration agreement and points out some of its consequences. A comparison between the arbitration and prorogation agreements follows (pp. 28 and onwards). The commonality between the two is found in their characteristics as procedural agreements, while the differences are sought in the applicability of different normative sources and the moments at which the validity of the respective agreement should be sought and established, determining the international character of the legal relationship.

1.2.3. Chapter Two is dedicated to the international legal regulation of prorogation of jurisdiction (pp. 34-76).

1.2.3.1. In the first part of this chapter, the author examines the regulation according to the so-called Hague Convention on Choice of Court Agreements of June 30, 2005 (pp. 34-52).

The exposition begins with the connection of the Convention to the previous regulation "Brussels I bis." It is followed by a relatively extensive commentary on its provisions. Special attention is given to the possibility of choosing a court with exclusive jurisdiction (pp. 44 and onwards) and the so-called "asymmetric agreements" (p. 48). The section concludes with a comparison between the Hague Convention of 2005 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (pp. 53 and onwards).

1.2.3.2. The second part of this chapter is dedicated to prorogation, according to the so-called "Lugano Convention" (pp. 61-76). A parallel is consistently drawn between this convention and the "Brussels I bis" Regulation, tracing the development of the legal framework and commenting on prorogation of jurisdiction according to this convention (pp. 67-76). Arguments are presented regarding whether the prorogation clause has an exclusive or non-exclusive nature. After describing the formal requirements for such a clause, competence based on the appearance of the defendant in the relevant case is also examined.

1.2.4. Chapter Three focuses on the legal framework of prorogation in EU law (pp. 77-186).

1.2.4.1. The first paragraph[2] is devoted to prorogation under Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction, recognition, and enforcement of judgments in civil and commercial matters, the "Brussels I bis" Regulation (pp. 77-117). The corresponding regulations are reproduced sequentially, with brief comments and historical references. To define prorogation, the author cites Article 25 of the mentioned regulation and provides a general characterization of the phenomenon, referring to other authors for a more in-depth analysis.

The exposition covers the subject matter, the issues of the international element, the choice of court, and the applicable substantive law; the effect of the choice of court agreement. Attention is given to the essence of prorogatory and derogatory functions, citing case law and doctrine. The author presents their own viewpoint as well (p. 91).

Further in the exposition, the effects of the agreement are examined, including regarding third parties and in cases of succession (p. 93), as well as concerning the chosen court and the non-selected courts. Requirements for validity (formal and material, including those based on customs in international trade) are discussed, including regarding the applicable law for this type of agreement. Finally, the author addresses "silent" prorogation and prorogation in cases involving a "weaker party" (pp. 106-117).

1.2.4.2. The second part (as designated by me - a paragraph) relates to prorogation under Regulation (EU) No 2019/1111 of the Council of Europe on jurisdiction, recognition, and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction (recast) - pp. 118-144.

The exposition begins by establishing the connection between the relevant regulation, the Brussels Convention of 28.05.1998, Regulation (EC) No 1347/2000, and Regulation (EC) No 2201/2003 (p. 118) – in other words, the development of the legislation is traced. It explicitly states that the prorogation under the discussed regulation does not apply to so-called "matrimonial matters" (as well as the limitations arising from this situation regarding other family disputes), while the

[2] The author does not designate the individual parts of the respective chapters but only provides titles written in capital letters. In other words, the indication of paragraphs is added by me, the reviewer.

concept of "child" is defined (p. 125). Hypotheses of concurrent proceedings for divorce and those related to parent-child relationships are examined, along with the respective possibilities for prorogation, including through interpreting the respondent's behavior. The hypothesis of termination of a matrimonial proceeding and its effect on related proceedings is also considered (p. 133 and onwards). The paragraph concludes with suggestions de lege ferenda regarding the so-called matrimonial matters (p. 142 and onwards).

1.2.4.3. The third paragraph of this extensive chapter is dedicated to Regulation (EC) No 4/2009 of the Council of 18.12.2008 concerning jurisdiction, applicable law, recognition, and enforcement of decisions, and cooperation in matters relating to maintenance obligations (p. 145-152).

1.2.4.4. The fourth paragraph is dedicated to prorogation under Regulation (EU) 2016/1103 concerning... issues related to the property regime between spouses (p. 156-170).

1.2.4.5. The last paragraph of Chapter Three pertains to the possibilities for prorogation under Regulation (EU) 650/2012 concerning succession matters (p. 171-186). The author consistently traces the need that led to the adoption of this regulation and the possibilities for prorogation in cases related to succession (including existing limitations), as well as issues related to the form of the respective agreement and other matters. In fact, the exposition also covers topics beyond those directly related to prorogation.

1.2.5. The fourth chapter examines the regulation of prorogation under the Private International Law Code (p. 187-197). The author succinctly reproduces the existing opinions in Bulgarian legal literature regarding the essence of prorogation and derogation of the competence of Bulgarian courts, explicitly emphasizing that derogation is not allowed in cases of exclusive competence of Bulgarian courts, listing the cases of exclusive competence outlined in the Private International Law Code.

In the subsequent part, the exposition focuses on the legal consequences of the prorogation agreement (p. 193) and the presumption of exclusive competence of the chosen court, which is described as rebuttable. The last part is dedicated to the issue of silent establishment of competence of Bulgarian courts.

1.2.6. The work concludes with a brief summary.

1.3. Positive aspects of the presented work:

1.3.1. Against the backdrop of the observed globalization of economic relations, the existence of opportunities for free movement of people, and various other factors, legal relationships with an international element are becoming increasingly widespread. This makes the subject matter under consideration significant, especially considering that this subject matter is usually unfamiliar to a large portion of practicing lawyers in the Republic of Bulgaria. In this sense, the choice of topic is fortunate, and the work being discussed is useful. A contribution can be found in what has been stated.

1.3.2. A positive characteristic of the work is the extensive analysis of numerous regulatory sources adopted at different times, where the author has sought to clarify their temporal and hierarchical relationship, which also has a contributory value, including practical application.

1.3.3. A contributing aspect is the author's attempt to draw comparisons between the jurisdiction agreement and the arbitration agreement.

1.3.4. The author has used a significant number of literary sources (32 in Bulgarian and 22 in foreign languages, as well as electronic sources)[3].

1.3.5. Twenty-two acts related to the activities of international courts (decisions, rulings, and opinions of representatives of parties involved in the respective proceedings) have been used and analyzed.

1.3.6. The work demonstrates a good understanding of the field of the subject matter.

1.3.7. As a result of the analysis conducted, the author has formulated several de lege ferenda proposals[4], among which I would highlight:

1.3.7.1. The author's proposal regarding the precise formulation of the concept of "habitual residence."

1.3.7.2. The proposed suggestions regarding the possibility of jurisdiction agreement in cases related to divorce, legal separation, and nullity of marriage are entirely acceptable, etc.

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[3] The counting may not be accurate since the author has only indicated the sources, and in some cases, they are not even arranged according to a clear criterion.

[4] It seems to me that when commenting on international legal sources, which are developed with exceptional care and by highly competent individuals, the expression "de lege ferenda" should not be used, and a higher degree of scholarly modesty should be demonstrated.

2. The work also has weaknesses, including the following:

2.1. Naturally, when developing a topic, an author tends to focus on the positive aspects and may overlook the negative aspects. In this work, jurisdiction agreement is treated as an entirely positive phenomenon, which is not always the case. The author takes a one-sided position, assuming that through the jurisdiction agreement (and the same applies to arbitration), parties involved in legal relationships with an international element seek to obtain fair, quality, and expedited dispute resolution (which is true in many cases). However, in many instances, each party seeks to secure a favorable forum and a favorable decision. The phenomenon of "forum shopping" is widespread but has not received the author's attention. Additionally, while it is commendable to compare the jurisdiction agreement and the arbitration agreement, I do not share the perspective presented in the work that improving the regulation of jurisdiction agreement will lead to new acceptable possibilities for avoiding arbitration as a method of resolving private legal disputes. The two methods are quite different and should not be juxtaposed.

2.2. If we attempt to identify the monographic nature of the work, we will be hindered by the lack of theoretical clarification of the essence of the phenomenon under discussion. A significant amount of legal regulation is reproduced without concentrated analysis of the essence, as the analysis follows individual normative sources. This gives the impression of a more commentarial nature. The historical overview is brief and scattered. The reader does not learn when, how, and why the possibility of jurisdiction agreement arises and whether the idea of such an agreement had the same dimensions in previous periods of time.

2.3. The structure of this work is not particularly acceptable (the author should seriously consider it if there is an eventual attempt at publication).

2.3.1. In the first part (the first chapter), in my opinion, the essence of the discussed institution should be outlined, and based on that, an attempt should be made to clarify its various aspects (I understand that this is difficult given the extensive competing normative sources).

2.3.2. I noticed that in the abstract, the author refers to paragraphs, but in the text, there are only headings in capital letters, which greatly hinders the understanding of the presentation[5].

[5] I do not question the proportionality of the chapters as I do not find it particularly essential. However, in the present case, I am not sure if the author has seriously considered the structure.

2.3.3. It would be useful to present the main conclusions of the research and any recommendations for improving the regulation in the conclusion. In its current form, the latter are scattered throughout various places, and only in the abstract has an attempt been made to systematize them.

2.3.3.4. There are other weaknesses that could be avoided with a good editing of the work, considering its potential publication.

3. It is evident from the presented professional biography that Kristian Raychev has been teaching for several years (as an honorary and regular assistant in Private International Law) and works as a lawyer at the Plovdiv Bar Association.

4. The doctoral candidate has four publications directly related to the topic of the dissertation.

CONCLUSION

From what has been stated, it can be concluded that the presented dissertation meets the established criteria in the practice of implementing the Development of Academic Staff in the Republic of Bulgaria Act, the Rules for its implementation and the Rules for the Development of the Academic Staff at “Paisii Hilendarski” University of Plovdiv

The work is dedicated to an important legal institution with significant relevance in legal relations with an international element, and as a whole, it represents a contribution. It demonstrates that Kristian Plamenov Raychev possesses sufficient theoretical knowledge in the field of private international law and the ability to conduct scientific research.

This gives me grounds to give a positive assessment of the qualities of the reviewed work and the doctoral candidate and to propose to the esteemed 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 Faculty of Law at “Paisii Hilendarski” University of Plovdiv.

June 6, 2023. Prepared by:

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