To the attention of

the members of the scientific jury in the competition for the acquisition of the educational and scientific degree "doctor" in the field of higher education 3 "Social, economic and legal sciences", professional direction 3.6 "Law", doctoral program: "Private international law"

REVIEW

by Dr. Boryana Bogdanova Museva

associate professor of private international law in

Faculty of Law of Sofia University "St. Kliment Ohridski"

Dear members of the scientific jury,

In my capacity as a member of the current scientific jury, I present a review within the competition for the acquisition of the educational and scientific degree "doctor" in the field of higher education 3 "Social, economic and legal sciences", professional direction 3.6 "Law", doctoral program : "Private International Law" with only one candidate, Christian Plamenov Raichev.

I. Brief introduction of the candidate

The only candidate in the competition is Christian Plamenov Raichev. He graduated from the "Law" specialty at the Paisii Hilendarski University of Plovdiv. Since 2019, he has been a doctoral student in private international law at the same higher education institution, where he has been an assistant since 2022. Since 2018, he has been working as a lawyer. He has numerous participations in scientific forums on legal topics, as well as teaching experience.

II. Scientific works submitted for participation in the competition

To participate in the competition, the candidate Christian Raichev submitted a monographic work entitled "Prorogation of International Competence". On the same topic, Mr. Raichev gave them 4 scientific publications.

III. Evaluation of the scientific research and scientific applied value of the scientific publications submitted for participation in the competition by the candidate

1. About labor - general notes

The main scientific publication submitted for participation in the competition is a monograph on " Prorogation of International Competence " - a work with a volume of 200 pages, 247 footnotes and a bibliography in Bulgarian, English and German. The remaining publications constitute its parts and accordingly will not be the subject of a separate analysis.

In its **essence** , the work is a general theoretical presentation of the prorogation of competence in the main areas of private international law. This is the first independent study of this topic, which attempts to collect, systematize and present the various options for choosing a competent court, regulated in national and international sources, as well as in the law of the European Union. This is its main scientific innovation.

The title of the dissertation corresponds to its content. The topic dedicated to the choice of court, and to some extent to arbitration, is presented in the context of the relevant legal act, in connection with which the history surrounding its adoption, the main prerequisites for application and schematically other types of international competence are described. It should be noted that these additional parts are relevant, but also that they shift the focus, insofar as they are similar in volume to the part of the work devoted to the immediate subject of the study.

The topicality of the topic is present, insofar as the positive legal possibility of choosing a court expands its field of application and develops over time, to which the rich practice of the Court of the EU also contributes. Separately, public relations with an international element have significantly increased their volume in recent decades, for which the doctoral student points out some of the relevant factors.

The goals set by Mr. Raichev , namely: to follow the development of the system, to present the basic provisions and principles of the system, from which to guide the judicial bodies in the individual types of private relations with an international element, testify to an approach that is oriented around generalization and systematization, and not so much towards entering into detail and arguing with the problems arising in connection with the in-depth analysis. The work follows the goals set.

The immediate tasks of the work, the doctoral student again orients to summarizing "main problems", setting "guiding ideas", justifying the need to apply the practice of the Court of the EU, taking into account the will of the parties and the peculiarities of various private relations with an international element. The tasks thus set are followed in the development.

Unfortunately, the work lacks independent derivation of a research **thesis** . However, it can be assumed that it is implicitly contained in bringing before the bracket the interest of the parties in the relevant relations to refer their dispute to the most suitable court for them.

The dissertation uses **classical positivist** research methods.

The presentation of the prorogation of competence has a significant **practical significance** , incl. and for the reasons simply stated by the doctoral student.

Structurally **,** the work consists of an introduction, four chapters, a conclusion and a bibliography. The uneven volume of individual chapters is striking (eg chapter one is about 20 pages, and chapter three is over 120 pages). The reason is the system chosen, in which the provision of the prorogation of competence in the regulations is separated into one chapter. Separately, from the point of view of technical layout, the work suffers from the lack of numbering inside the individual chapters, which is absolutely unacceptable for such a voluminous composition.

2. About the content of the work

The introduction sets the framework for the work by introducing its subject, aims, objectives and basic structural elements.

Chapter one is devoted to the sources of law and the arbitration agreement as a similar institution. Within 5 pages, the main sources related to the prorogation of competence are generally presented mainly by the enumeration method. There is a lack of presentation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and an analysis of its role in determining international competence. The following is a description of the famous theses about arbitration, namely - its essence and advantages. At the end of this chapter, it gets into the substance of the topic by comparing choice of court and arbitration. The first chapter does not give an

independent definition of a prorogation agreement, which in some sense makes it difficult to follow the comparison made and the subsequent study.

The second chapter is entitled "International legal regulation of the prorogation of jurisdiction", in which Mr. Raichev presents two international conventions: the Hague Convention on Choice of Court Agreements of June 30, 2005 and the Lugansk Convention on Jurisdiction, Recognition and Execution of Judicial decisions on civil and commercial cases from October 30, 2007. In connection with the Hague Convention, considerable attention has been paid to the reasons for the EU's accession to it, incl. the proposal of the European Commission on this occasion is reproduced almost verbatim. Essentially, here is a presentation of its relationship with Regulation (EU) No. 1215/2012, as well as the individual prerequisites for its application. Special attention is paid to the law applicable to the material reality of the choice of court agreement and criticism is made to the preservation of the ability to forward. Of added value is the comparison between the Hague Convention's choice of court agreement and the arbitration agreement. Here it is worth noting the reflections on the attitude of individual countries to the "court or arbitration" alternative. On the occasion of the Lugansk Convention, the historical development and its relationship with the aforementioned regulation, as well as the explicit and tacit choice of court, are again examined.

Chapter three is the core of the dissertation. It is entitled "Regulation of the Prorogation of Competence in EU Law". From the content it can be seen that by "EU law" we mean the regulations. Legally and dogmatically, however, the international conventions presented in the previous chapter are also sources of EU law, incl. because they are joined by the EU and are subject to interpretation by the Court of Justice of the EU.

The dissertation in this part starts from the main source - Regulation (EU) No. 1215/2012 and logically pays the greatest attention to it. The regulation is presented in historical development - in the context of the Brussels Convention and the previous Regulation (EC) No. 44/2001. The hypotheses of choice of court are distinguished, namely: explicit, silent and with the participation of a weaker party. Mr. Raichev sets out the prerequisites under which a court of an EU member state can assume that he was chosen by the parties, as set by Art. 25. In addition, some of the relevant decisions of the Court of Justice of the EU are presented. Special attention is paid to the types of choice of court, as well as to the functions and operation of the prorogation agreement.

The form of the agreement is also examined, and in this connection the doctoral student has an idea and his critical attitude towards the so-called click-through contracting and its applicability to relationships with or without the participation of users. In the case of the silent choice, the already established views on the subject are presented, and the doctoral student also takes a position on some of the discussion topics (eg the requirement that one party has a place of residence in an EU member state). When presenting the choice of court with the participation of a weaker party, Mr. Raichev criticizes the alternative reference to domicile and habitual residence, suggesting that the latter should be dropped (p. 116).

The second source, which is discussed in chapter three, is the new Regulation (EU) 2019/1111 and its predecessor Regulation (EC) No. 2201/2003. Again, not a small part is of a historical nature, including here the already repealed regulation under Art. 12 of Regulation (EC) No. 2201/2003, which is at the expense of the relatively cursory consideration of Art. 10 of Regulation (EU) 2019/1111. The attempt to cover both regulations creates a sense of confusion – for example, it is not clear whether the new regulation actually excludes the possibility of choosing a court when considering a claim for divorce and a claim for parental responsibility. Separately, one does not go into the depth of the changes, but mechanically walks along the surface of the description. There is no citation to the newly adopted and available on the European e-Justice Portal Practical Guide to the Implementation of Regulation (EU) 2019/1111, whose analysis of the choice of court in parental responsibility cases goes beyond the analysis in the dissertation in detail. In this part of the exodus, the criticism of the lack of choice of court in matrimonial claims deserves to be noted as a contribution (pp. 142-144).

The third source examined is Regulation (EC) No. 4/2009. Historically and positively-legally, the arrangement is presented, emphasizing the exclusion of the possibility of an explicit choice of court for persons under 18 years of age. The thesis is formed that, in view of the protected interests, this regulation is closer to the regulation on parental responsibility than to Regulation (EU) No. 11215/2012, and the need for an upcoming reform is emphasized.

The fourth source is Regulation (EU) 2016/1103 (missing 2016/1104), and in this part the dissertation has a descriptive character with a main emphasis on the situations in which there may be a choice and no other regulations apply. The part dedicated to the last source of this chapter -

Regulation (EU) 650/2012 - has the same narrative character. The main prerequisites and the method of application of the prorogation agreement are specified in the specific relations arising in disputes regarding property relations between spouses and inheritance with an international element.

The last **fourth chapter** has as its subject the national regulation according to Art. 23 and Art. 24 of the Civil Code. It is presented descriptively and with reference to a legal doctrine (without specifying which one!). After presenting the prerequisites for application at the end of this part, the doctoral student reaches the general conclusion that when applying Regulation (EU) 1215/2012 art. 23 KMChP has lost its effect. This is the case in the vast majority of cases, but not in all cases (e.g. in the case of a choice of court in a country that is not a member of the EU and not a party to the Hague Convention). Separately, the connection and interaction with the sources of EU law has not been studied in depth and comprehensively (e.g. what exactly does the requirement that the Bulgarian court does not have exclusive jurisdiction under the CISG, if the dispute falls within the subject scope of the Regulation) mean.

The conclusion summarizes the significance of the dissertation according to its author.

3. About the abstract and contributions

Mr. Raychev's **abstract correctly presents the main elements of the dissertation work.** It identifies 7 scientific contributions as follows:

i. First attempt at a comprehensive study of the problems of prorogation;
ii. Proposal to drop the "habitual residence" criterion used in a court selection agreement with the participation of a weaker party in Regulation (EU) No. 1215/2012;
iii. Proposal to allow the possibility of choosing a court in matrimonial cases;
iv. A comparison between the choice of court agreement, the arbitration agreement and the Hague Convention agreement;
v. An attempt at a comprehensive analysis of the main sources on the subject and indicating specific examples of application of the various normative sources;
vi. Interdisciplinary research approach;
vii. A baseline for subsequent scientific analysis and law enforcement assistance.

The dissertation gives reason to believe that the described contributions exist. There is a first comprehensive study on the topic of competence prorogation comparing different types of prorogation, incl. and with the arbitration agreement. The two change proposals are justified and presented in their respective systematic place. The interdisciplinary approach is present, insofar as in international private law it is its inevitable working concept, because the discipline covers different branches of private law and implies consideration of their specific features. Undoubtedly, the summarization and systematization of the legal framework gives grounds for subsequent scientific research and serves as a starting point for practice.

I believe that the presented dissertation achieves the goals set at the beginning and meets the tasks set. The dissertation was developed on the basis of scientific writings - Bulgarian and foreign, as well as court decisions of the Court of the EU and several other national courts. It demonstrates the ability to systematize information, to extract relevant theses and judgments, to include them in the systematization and logic of the composition, as well as to assess their validity.

Christian Raichev proves that he has sufficient in-depth scientific knowledge and ability for independent scientific research for this stage of his academic development. The cited literature and practice testify to entering into the considered issues. The presentation of the individual types of competence prorogation show that the doctoral student has mastered the key methodologies of work in a way that allows him to form his own theses.

IV. Critical notes and recommendations

As to any product of human labor and to the presented dissertation, some notes and recommendations can be made:

1. Unfortunately, existing scientific literature in our country on the topic of the dissertation is not analyzed in full in the dissertation. Key writings on the occasion of the prorogation of jurisdiction are missing (e.g. by Dafina Serbinova - The international element in arbitration agreements with a provision for arbitration abroad. - Contemporary law, 2016, issue 4, 19-39; Are unilateral jurisdiction clauses valid? , magazine "Commercial and Obligation Law", 2013, vol. 07, 27-40, by Vasil Pandov - "The Convention for the Protection of Human Rights and Fundamental Freedoms as a Source of Bulgarian International Private Law", part of a collective work with title " *International contract - source of international private law* ", "Siela. Norma" AD, October, 2013.

ISBN 978-954-28-1356-9; Museva - Agreement on the choice of court in civil and commercial cases, studies, sp Legal World, 1/2013, pp. 69-96, studies; Through the labyrinth of international jurisdiction in civil and commercial cases, Journal of Legal World, 2006, issue 2, pp. 41-91, studies; Reform of international jurisdiction and exequatur in civil and commercial cases in EU member states (New Brussels Ia Regulation), Journal of Commercial Law, 4/2014, pp. 5-25, article; The international treaty in the matter of international competence, the recognition and enforcement of foreign judgments in civil and commercial cases , article in the collection "The international treaty - source of international private law", Sofia, Siela, 2013, studies; Eva Kaseva - Choice of law applicable to maintenance obligations with an international element - Journal of Advocacy Review, no. 1, 2017, pp. 27-40; Competence and applicable law to maintenance obligations under Regulation (EC) 4/2009, 2018, Sofia, "Book Factory" publishing house, - "BGkniga", 488 p., ISBN : 978 - 619 - 229 - 013 -9; and others.).

2. In many places in the dissertation, general reference to "established jurisprudence", "scientific literature", etc., is noticed, without specifying specific scientists and jurisprudence;
3. There is no analysis of Bulgarian judicial practice on the topic of the dissertation. The practice of the Court of Justice of the EU is not presented in full on the topics concerned;
4. Numerous references are made to secondary material such as summaries of acts of EU law, which are not scientifically sound. At the same time, key reports and practical manuals that analyze the choice of court in depth are missing (e.g. the Jenard Report, the Practical Manual under the new Regulation 2019/1111, etc.);
5. Individual false and/or imprecise statements are encountered (e.g. that the sources of EU primary law are not considered direct sources of European private international law (p. 16), that at one level the hierarchy of sources is at the same time EU primary law and the Constitution, respectively, on the second level are both secondary law and international treaties (p. 20) that "the most recent EU legislation determines that the court of a member state referred to refers to its own law when assessing the substantive reality of the agreement (page 30, and in other places) that the concept of "residence" is defined in Articles 62 and 63 of the Regulation and for its clarification it is necessary to use this definition, and not to interpret it on the basis of national legislation (note under line 90 – false regarding natural persons) that international jurisdiction follows the principle of the

closest connection (p. 114), that the possibility of choosing a court is removed when considering a claim for divorce and a claim for parental rights (p. 126), it is omitted to limit the possibility of tacit choice only to persons who become parties to the process after its formation (e.g. prosecutor - p. 140).

Although I consider a large part of the criticisms presented to be serious, I am convinced that it is within the power of the doctoral student to remove them and to develop the ability to carry out a thorough, reasoned and consistent scientific research with the standards of academic ethics.

V. Conclusion

In conclusion, bearing in mind the considerations stated above, I express my positive assessment that the dissertation work presented for defense on the topic "Prorogation of international competence" by Christian Plamenov Raichev meets the requirements of Art. 6, para. 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria (ZRASRB) and on Art. 27, para. 2 of the Regulations for the implementation of ŽRASRB for obtaining the educational and scientific degree "doctor", which is why I propose to award the educational and scientific degree "doctor" to Christian Plamenov Raichev.

Sofia, **Member of the Scientific Jury** : _____

(Assoc. Dr. Boryana Museva)