

REVIEW

by Prof. Dr. Gabriela Belova Belova-Ganeva,

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in competition for the academic position of Associate Professor in the field of higher education
3. Social, Economic and Legal Sciences, professional field 3.6 Law (Private International Law),
announced by the Burgas Free University, State Gazette No. 29 of 02.04.2024

Subject: the scientific, scientific-applied and professional-academic activity and
production presented by Dr. Emine Hasan Ilyaz - the only participant in the competition

By Order № № RD-141/30.05.2024 of the Rector of Burgas Free University - Prof. Dr. Milen Baltov, I have been appointed as a member of the scientific jury in connection with the competition for the academic position of Associate Professor, announced in State Gazette No. 29 of 02.04.2024, in the professional field 3.6 "Law" (Private International Law). At the first meeting of the scientific jury I was entrusted to prepare a review. Pursuant to the order of the Rector of BFU and the decision of the Scientific Jury, guided by the requirements of the Law on the Development of Academic Staff of the Republic of Bulgaria, the Regulations for its Implementation and the Regulations for the Development of Academic Staff at BFU, I offer to the attention of the esteemed members of the Scientific Jury the following my findings and conclusions, as well as the conclusion motivated by them.

I. Summary data on the scientific production and activities of the candidate

The scientific production submitted by the candidate Dr. Eminet Ilyaz corresponds to the nature of the announced competition, namely - private international law. It includes publications in several scientific fields: (1) on the problems of energy investment disputes in the context of international arbitration; (2) on the specific features of expedited arbitration in modern practice; (3) the legal regime of access to the labour market for third-country nationals; (4) the law applicable to environmental pollution at sea under private international law; (5) the ethical rules applicable to lawyers of parties in international commercial arbitration, as well as the legal analysis of Article 7 of the Vienna Convention on the Law of Treaties on the Law of the Sea. (6) international conventions on maintenance obligations in Turkish private international law, as well as the law applicable to construction contracts from the perspective of FIDIC (International Federation of Consulting Engineers) and arbitration in Turkish private international law.

In quantitative terms, the scientific production meets the requirements and criteria set out in the national scientific-metric indicators for the professional field 3.6 Eligibility for the academic position "Associate Professor" (in all groups of indicators), as well as the additional

requirements of Burgas Free University. There is a reference, supported by relevant written evidence, with the publications distributed as follows:

- a major monograph „**Energy Investment Disputes in the Context of International Arbitration**“, (reviewers: Prof. Maria Neikova, Dsc. and Assoc. Prof. Anna Dzhumalieva), ed. Burgas Free University, ISBN 978-619-253-036-5, 2024, which complies with the statutory requirements (in the RAADB Act) for a "monograph" insofar as it explores a specific problem comprehensively and fully and undoubtedly constitutes an independent author's study;
- a published monograph based on a defended dissertation for the award of PhD with the title „Child Guardianship and Custody in International Family Law“, ed. Burgas Free University, ISBN978-619-253-035-8, 2024, reviewed by Prof. Dr. Fluria Yusufova Bilgin; translated from Turkish by Assoc. Prof. Dr. Menet Shukreeva and the author Emine Ilyaz, PhD;
- two articles published in 2024 in the journal. "Strategies of Education and Science Policy", issue 4s/2024, ISSN 1310-0270 - Web of Science refereed publication;
- four articles and reports in Bulgarian published in non-refereed peer-reviewed journals or published in edited collective volumes.

The candidate, Emine Hasan Ilyaz PhD, received a higher legal education at BFU in 2006. She worked in the Regional Administration - Burgas, as well as as a legal consultant in various commercial companies and private structures. Since 2013, she has been enrolled in the Bar Association - Burgas. During the period 2013-2019 she studied and obtained a Doctorate in Law, specialty in Private International Law at the University of Istanbul, Turkey, which should be highly appreciated and merited. The doctoral degree is recognized by the NACID (Certificate No. 08-00-36/11.09.2023).

II. Characteristics of the candidate's scientific and applied production

Of the publications submitted in the candidate's list, I accept for review the submitted monograph "Energy Investment Disputes in the Context of International Arbitration", (reviewers: Prof. Maria Neikova, Dsc. and Assoc. Prof. Anna Dzhumalieva), ed. Burgas Free University, ISBN 978-619-253-036-5, 2024); two articles published in a Web of Science refereed journal; four articles and papers published in non-refereed peer-reviewed journals or published in edited collective volumes. In accordance with the requirements of the Law on Research and Development and its Implementing Rules, the applicant has the following scientific metrics:

- GROUP A. Dissertation for the award of educational and scientific degree "Doctor" entitled: "Guardianship and custody of children in international family law", Diploma № 5089 issued on 18.06.2020 by Istanbul University, Republic of Turkey, professional field of law, scientific specialty: private international law; Certificate № 08-00-36/11.09.2023 issued by NACID - 50 points.

- GROUP C. Published monograph, which is presented as a major habilitation work - "Energy Investment Disputes in the Context of International Arbitration", ed. Burgas Free University, ISBN 978-619-253-036-5, 2024 - 100 points. The monograph is the first independent comprehensive study of energy investment disputes in international arbitration, so far the Bulgarian legal literature lacks a comprehensive in-depth analysis of a similar nature. The work is structured in an introduction, five chapters, a conclusion and a bibliography, a list of cited literature, as well as a summary and a table of contents. The printed volume is 312 pages.

The the relevance of the monograph is related to the increasing number of energy investment disputes as well as the withdrawal of the European Union and Euratom from the Energy Charter Treaty (ECT) after the European Parliament approved this at its last plenary session in April 2024.

It should be emphasized that the international legal framework of foreign investment began to develop in the 1960s, emphasizing the interaction between economic development, international cooperation and the role of private international investment. In 1965, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the so-called ICSID Convention) was adopted, on the basis of which the International Center for Settlement of Investment Disputes (ICSID) was established. The success of the idea is confirmed by the fact that the Convention enters into force the very next year. Since the 1990s, there has been a veritable wave of growth in investment disputes, resulting both from the regulation of the possibility of resolving disputes by arbitration and from the conclusion of a large number of bilateral investment treaties. An analysis of the extensive practice of the various adjudicatory bodies for the resolution of disputes between private parties and investment host States is necessary in order to make it uniform and uncontroversial.

The above comes to confirm the **relevance** of the presented habilitation work for both our legal theory and practice. The relevance is indisputable, including in view of the latest decisions and acts of the Court of the European Union, namely the decision in case C-284/16 Slovak Republic v. Achmea. As is known, the decision in the Achmea case of the Court of Justice of the European Union has given rise to a number of disputes, the conclusions of the Court of Justice of the EU (which did not adopt the opinion of the Advocate General in the case) were not accepted by the International Center for the Settlement of Investment Disputes (ICSID), so in doctrine.

In the Bulgarian legal literature at the moment there is one complete work on the law of foreign investments by Prof. Dr. Nikolay Natov, as well as the doctoral dissertation defended in 2019 by colleague Tsvetelina Dimitrova on the topic: "Methods for settlement of investment disputes". A number of articles have also been published, but they do not have as their task a complete and comprehensive study of the issue. The current habilitation work is focused on the resolution of **energy investment disputes** in the context of international arbitration, which is

why it represents a novelty for legal research in our country. Moreover, as stated on page 24 of the monograph in 2023, 23% of the arbitration cases brought before ICSID in the previous year were related to disputes arising from investments in oil, natural gas and mining, and 12 % were related to investments in electricity and other types of energy production. The importance of energy investment disputes is also illustrated by *the Yukos Universal Limited (Yukos) v. Russian Federation* decision, where the arbitral tribunal's award of USD 15 billion in damages is the highest amount ever awarded in international investment law. The complexity of the issues under consideration is also related to the fact that investment law includes both provisions of international economic law as part of international public law and the national law of the countries receiving the investment. All too often, especially within the European legal system, it is difficult to draw the line between private and public law aspects in this area, which raises the question of how clearly international economic law is distinguished from public or private investment law.

Undoubtedly, arbitration as a way to settle investment disputes between investors with the nationality of one country and another country accepting the investment is the most common way, and in the habilitation work the author has devoted main attention to it. The various types of investment dispute arbitration are discussed in detail. The specificity of entrusting the resolution of an investment dispute to arbitration lies in the basis from which the arbitration derives its competence, which is clearly indicated by the author. Proceedings on investment disputes before the International Center for Settlement of Investment Disputes according to the ICSID Convention have been considered in sufficient detail and supported by relevant practice.

Chapter one formulates the basic terminology related to the concepts of investment law, arbitration proceedings, investment agreements (bilateral and multilateral), the Energy Charter Treaty (ECT). In this context, the characteristics and sources of international investment law as well as investment arbitration are discussed.

In chapter two the definition of the terms "investment", "energy investment", "investor", "investment dispute" is given, and the genesis of the investment dispute is examined in detail. In doing so, the author sets out to define the concepts used in determining the jurisdiction of dispute resolution bodies over the subject matter and the person in resolving disputes arising from energy investments. In the second paragraph of the chapter, the concept of 'investment dispute' is analysed in order to determine the subject matter jurisdiction of the dispute settlement bodies.

The third chapter covers the dispute settlement mechanisms that apply to the resolution of investment disputes and, in this connection, defines the jurisdiction of the dispute settlement bodies. It analyses the jurisdiction of national courts in the context of referrals to host and third country courts. The courts of the host State are recognised as the traditional competent dispute settlement authorities for investment disputes. However, according to the author, the extent to which the courts of third States or of the source State can be considered competent to hear investment disputes by establishing extraterritorial jurisdiction is a debatable issue in investment law. It is fairly noted that the method of arbitration, which is discussed in the second paragraph

of the chapter, has become one of the main tools of investment law and has become the preferred method of investors to settle their disputes.

Chapter four deals with the determination of the law applicable to investment disputes. As the source of the dispute is important in determining the applicable law to investment disputes, the topic is analysed in two main areas: contract-based disputes and agreement-based disputes, which definitely generate more discussion.

Chapter five examines new developments and attempts to address shortcomings in international investment arbitration and the impact of European Union law on energy investment disputes. The presentation in this chapter also outlines the practical and applied contributions of the study.

A significant **scientific contribution** of the monographic work "Energy Investment Disputes in the Context of International Arbitration" is the definition of the concept of "energy investment" and the detailed discussion of the concept of "energy investment" in the ECT.

The analysis of the dispute resolution mechanism in the ECT and the USMCA (US-Mexico-Canada Agreement), the assessment of the provisions of the ICSID Convention and the ECT on personal jurisdiction and the identification of the problems arising from the fragmented structure of international law with regard to investment disputes in the field of energy also stand out for their **originality**.

In my view, a **contributory point** is the consideration of the issue of applicable law in energy investment disputes. It concludes that the problem of applicable law is the allocation of roles between host state law and international law in dispute resolution. In the ECT, the applicable law in dispute settlement is determined in accordance with the provisions of the ECT and the provisions of international law (Art. 26, paragraph 6 of the ECT), thus avoiding a discussion on the applicability of international law to disputes. However, the author notes that most investment agreements do not contain a provision on the applicable law. It is generally accepted in doctrine and practice that investment agreements constitute *lex specialis* with respect to the matters they govern and that they are subject to international law as they are inter-state agreements.

The presented monographic work "Energy investment disputes in the context of international arbitration", in addition to the stated purely scientific contributions to the development of international legal doctrine, also has **serious scientific and applied contributions** and would contribute to the better differentiation and selection of the applicable law and the applicable mechanism for resolving energy and investment disputes.

The monographic study is distinguished by a rich scientific apparatus (1424 footnotes), as well as a bibliography that includes sufficient sources in Bulgarian, English and other languages, as well as normative sources and Internet resources. The titles presented show a good knowledge of the author in the field of private international law, but also in the field of European Union law.

- For the indicators in GROUP D - 100 points are required, publications by the applicant are presented that form them. A second monograph entitled "**Child Guardianship and Custody in International Family Law**", ed.

Burgas Free University, ISBN978-619-253-035-8, 2024, reviewed by Prof. Dr. Fliuria Yusufova Bilgin. (Translation: Assoc. Prof. Dr. Menet Shukreeva and Eminent Ilyaz, PhD). The monograph is 226 pages long, structured in an introduction, five chapters, a conclusion and a bibliography. The book is the first Bulgarian and Turkish monographic study on child custody in private international law.

All the articles that are attached for review are focused on the problems of private international law, some of them are on the topic of the author's monograph, others are independent scientific contributions. But all of them show the purposeful scientific activity of Eminent Ilyaz PhD, which deserves a high complex evaluation. The overall creative output demonstrates a consistency of scientific and pedagogical effort, based on a broader thematic range of interests and an original research method. It cannot be overemphasized that the range of research is spread over several different areas and covers publications not only on the issues of energy investment disputes in the context of international arbitration, but also on the specific features of expedited arbitration in modern practice (publication No. 1 on the list of publications). The legal analysis is made, the advantages and disadvantages of expedited arbitration are discussed in detail.

Publication No. 2 on the legal regime of access to the labour market for third-country nationals, which distinguishes between authorisation, registration and declaratory regimes with a total of seventeen procedures, is also of particular scientific merit. An attempt is made to highlight their most important features, and the article is accompanied by up-to-date statistics from the Employment Agency on the types of work permits issued to third-country nationals. A definition of the types of employment according to the Bulgarian legislation and the secondary law of the European Union is given.

Another area of research of Emine Ilyaz, PhD is a very important area, which is the law applicable to pollution of the high seas under private international law (Publication 3). The article published in English discusses the 1958 Geneva Convention on the High Seas and the UN Convention on the Law of the Sea, to which the Republic of Bulgaria is a party. It also discusses the Torrey Canyon incident, which shows the importance of regulating oil pollution through international agreements. As the high seas are an area that does not fall under the sovereignty of any one state, very special problems can arise in the event of pollution in these areas. The first of these problems relates to the jurisdiction of the polluter causing pollution. In the author's opinion, in accordance with the above-mentioned Conventions, ships on the high seas are under the exclusive jurisdiction of the State whose flag they fly.

The publications under No. 4 and 6, devoted to the ethical rules applicable to the lawyers of the parties in international commercial arbitration, as well as the legal analysis of Art. 7 of the Vienna Convention on the International Sale of Goods (CISG), and in the event that the interpretation of the contract between the parties reveals that there is no provision applicable to the matter, this contractual gap should be filled by applying the usual practice.

Articles under No. 5 and 7 of the list of publications are also worthy of attention, which deal with international conventions on maintenance obligations in Turkish private international law, as well as the law applicable to construction contracts from the perspective of FIDIC and arbitration in Turkish private international law (in Turkish).

- GROUP E - 50 points required, 100 points submitted for the applicant. The citations submitted for review are from the category of citations or reviews in scientific journals, refereed and indexed in world-known databases of scientific information - 30 points and citations in monographs and collective volumes with scientific peer review - 70 points. Emine Ilyaz, PhD also meets the requirements of the law with respect to the last group of science metrics.

III. Critical notes and recommendations

I would recommend the candidate to continue focusing on topical issues of private international law in her future writings by publishing in other legal journals in order to increase the recognition and promotion of the candidate's scholarly output in the country.

IV. Conclusion

On the basis of the presented monographic work and the other original scientific publications by the candidate, as well as considering the diverse pedagogical activity, I state my unequivocal and clear **positive assessment** and recommendation that Emine Hasan Ilyaz, PhD occupy the academic position of "associate professor" in professional field 3.6 "Law" (Private International Law) at Burgas Free University.

July 16th. 2024

Member of the jury: Prof. Dr. Gabriela Belova