

R E V I E W

by Prof. Dr. Silvi Vassilev Chernev - Lecturer in Civil Procedure at Burgas Free University and Plovdiv Paisii Hilendarski University

ON: The materials submitted for participation in the competition for the academic position of Associate Professor at Burgas Free University in the professional field: 3.6. Study programme: "International Private Law".

DEAR MEMBERS OF THE SCIENTIFIC JURY,

I submit the following review on the application of Dr. Eminne Ilyaz for participation in a competition for the academic position of Associate Professor in the professional field 3.6. Law, scientific specialty "Private International Law", announced in State Gazette No. 29/ 02.04.2024.

1. Information about the competition

The competition is announced for the needs of the BFU Centre of Legal Studies, according to the Decision of the Academic Council by Protocol № 2/ 15.03.2024.

I am included in the scientific jury of the competition according to the Order № RD-141/ 30.05.2024 of the Rector of BSU.

2. Brief information about the participants

Dr. Emine Ilyaz - graduated from BSU - Master of Law in 2006 - is the only candidate in the competition.

She obtained her PhD in Private International Law from Istanbul University, Republic of Turkey. She has worked as a junior expert in the Regional Administration - Burgas and as a lawyer.

3. Fulfilling the requirements for the academic position

3.1. The set of materials submitted by Dr. Emine Ilyaz is in compliance with the requirements of the Academic Staff Development Act in the Republic of Bulgaria, the Regulations for the Implementation of the Academic Staff Development Act in the Republic of Bulgaria and the BSU Academic Staff Development Regulations.

3.2. The applicant is a Doctor in Law as of 25 December 2019 (more than 4 years at the time of this competition, as evidenced by the back of the attached document - Diploma No. 5089 issued on 18.06.2020).

3.3. She presented a published monographic work "Energy Investment Disputes in the Context of International Arbitration", ed. Burgas Free University, ISBN 978-619-253-036-5, 2024.

She has presented two articles/papers published in scientific journals, refereed and indexed in world-renowned databases of scientific information.

She has also submitted five articles/papers in non-refereed journals published after the defense of her PhD thesis, one in English and one in Turkish.

3.4. In 2023-2024, she has conducted 65 hours of lecture course in Private International Law (official note No. 93-00-207/27.06.2024 BSU).

3.5. She has also published a monograph based on her doctoral thesis - Ilyaz, E., Guardianship of the Child in International Family Law, BSU, ISBN 978-619-253-033-4, 2024.

3.6. The applicant has submitted a list of scientific citations.

The submitted documentation fully complies with the scientometric requirements according to the legal norms in force - 425 points in total.

4. Brief description of the presented scientific papers/publications

4.1. The submitted habilitation thesis is entitled: "Energy Investment Disputes in the Context of International Arbitration" and is 311 pages long. It consists of an Introduction, 5 chapters and a Conclusion.

4.1.1. The introduction is preceded by a short annotation in Bulgarian and English.

The Introduction (pp. 17-27) justifies the need for a dedicated study of the problems of investment law in the field of energy sources in a period of energy market liberalisation. Special attention is paid to the specifics of investment disputes and their resolution, including through the use of arbitration mechanisms and in particular - arbitration under the ICSID Convention (the so-called "Washington Convention on Settlement of Investment Disputes"). Specific data on the movement of the number of investment disputes in the area under consideration are given; the objections to the use of the arbitration method for handling such disputes are also analysed.

4.1.2. CHAPTER ONE is titled "An extended analysis of investment law" (pp. 29-56).

The author consistently presents investment legislation as part of a legal system, international agreements for mutual protection (promotion) of investments (bilateral and multilateral). It examines the procedural rules for dispute settlement in their development, going through the multilateral Energy Charter Treaty, reaching the creation of the ICSID mechanism.

4.1.3. CHAPTER TWO (Concept of energy investment and investment dispute - pp. 57-140).

The first paragraph of this chapter discusses the concepts of energy and energy investment. The author starts by discussing the concept of investment in general, looking at its essential aspects, and also analyses the different definitions used in different regulations.

The presentation then turns to the concept of investor and its characteristics (natural or legal person; nationality citizenship, and the problems associated with the definition of these categories); It also examines the various mechanisms for protecting investors (their investments).

The second paragraph of this chapter is devoted to investment disputes (their sources and forms of manifestation), and also to the distinction between an investment dispute and a dispute arising out of a contract (this is sometimes particularly difficult in the case of privatisation contracts which contain investment clauses).

4.1.4. CHAPTER THREE is entitled "Energy Investment Dispute Resolution Mechanisms" (pp. 141-208).

This chapter is devoted to the specifics of energy investment disputes. The options for the resolution of this type of dispute by national courts (home or third country; host country national courts) are examined in turn. Particularly extensive is the second paragraph devoted to the handling of energy investment disputes through arbitration (under the rules of general arbitration or ad hoc arbitration, and also through the rules of the SCC, ICC, UNCITRAL (ad hoc arbitration rules) and, finally, ICSID. The author goes into the details of the relevant procedures.

The last paragraph is devoted to the problems arising from the peculiarities of international law with regard to investment disputes in the energy sector and, in particular, to the impact of duplicative proceedings.

4.1.5. CHAPTER FOUR is devoted to determining the applicable law (pp. 209-263).

The chapter begins with a rather lengthy discussion of the determination of the applicable law (while also addressing specific issues in the treatment of investment disputes). This is followed by general remarks on determining the applicable law, including in the case of contractual disputes.

The last paragraph is devoted specifically to the determination of the applicable law in the field of investment agreements.

4.1.6. Chapter FIVE is devoted to new trends in international investment arbitration and the impact of the EU attitude on energy investment disputes (pp. 265-292).

The first paragraph is devoted to outlining new trends in the light of attempts to address the shortcomings of international investment arbitration.

The author then turns to the implications of the Lisbon Treaty for the energy investment dispute resolution regime.

The next paragraph is devoted to the significance of the Achmea decision.

The chapter concludes with an analysis of the status of the so-called 'Energy Charter Treaty' and the problems raised by the need for the versioning of energy sources and the shift to renewable energy in the face of apparent climate change.

The author provides an in-depth analysis of the problematic points in the said Charter - both in the area of the definitions used therein and on quite a number of other miscellaneous issues, including the problems of dealing with investment disputes.

4.1.7. The work concludes with a Conclusion outlining developments in energy investment litigation; achievements and outstanding issues in this area.

Работата завършва със Заключение, в което се очертават развитието на разглеждането на спорове в областта на енергийните инвестиции; постиженията и нерешените проблеми в тази област.

5. Positive features of the work

5.1. First of all, it should be pointed out that the chosen topic is particularly topical and has considerable theoretical and practical utility (albeit for a relatively small number of lawyers for understandable reasons).

5.2. The work under review has a distinct character of a monographic study - the problems of investment disputes in the field of energy sources are examined in breadth and depth. It should be noted that the author has not limited herself to the consideration of the international private law issues related to the topic. The exposition covers general issues of investment law, as well as issues of dispute resolution (which is itself a rather vast and complex subject).

5.3. The exposition is rich and versatile. A high level of legal literacy is evident, and along with traditionally familiar areas (contract law, public international and private international law, etc.), it also covers areas that usually remain unfamiliar to the vast majority of lawyers (investment law, international investment and commercial arbitration, etc.).

5.4. Particularly impressive is the extremely rich scientific apparatus - 177 titles in Latin and 26 in Bulgarian. The footnotes are 1424. The predominant use of foreign literary sources is easily explained by the fact that the main part of the matter under

consideration is rather poorly developed in our legal literature. As the attached bibliography of Bulgarian scientific and practical research on the issues raised shows, the latter have not been the subject of serious study even at the textbook level - only individual aspects have been addressed in articles or reports.

5.5. The language used is precise (especially considering that the candidate defended her PhD thesis in a language other than Bulgarian).

5.6. The author handles with ease the difficult subject of investment law and in particular the peculiarities of energy investments. The serious knowledge of the peculiarities of the legal relations in the considered area enables her to orient herself and to analyse the specifics of the disputes that arise in this area. The main problem arises from the fact that in this type of dispute the defendant is usually a sovereign State and the claimant a private individual. If the general rules of dispute resolution were followed, disputes would have to be resolved by the courts of the defendant. However, this means that the courts (which are in fact part of the state machinery) have to decide in an independent and impartial manner cases in which their own state is the defendant. In addition, sovereign states are highly suspicious of arbitral formations that are usually entirely outside their control.

It is these characteristics that are well grasped and analyzed in the present work.

5.7. All that said, the overall work has the characteristic of a scientific contribution. The elaboration of all the individual problems can also be qualified as contributing points.

5.8. No less important is the last chapter, which discusses the shortcomings of the existing legal regime and possible ways to improve it.

(The author shows scholarly modesty and reduces the presentation to a discussion of the problems rather than proposing her own solutions, which is highly unacceptable in the field of international law regulation).

6. In view of the fact that the work has already been published, some of the remarks that might be made remain irrelevant.

6.1. Perhaps in a future revision for further republication and updating, the author should dispense with generalities that are not the direct subject of the study (e.g., on pp. 209 ff.).

6.2. In the part of the exposition devoted to the choice of applicable law (perhaps because of the desire to cover everything), the author conflates the problems of determining the applicable law in the field of contract law (which is actually redundant) and in the field of investments.

7. Of the additional articles and reports submitted (seven in total, of which one title is in Turkish) - the vast majority deal with private international law issues and two are related to international arbitration issues.

8. CONCLUSION

Emine Ilyaz's scientific works submitted for the competition fully comply with the requirements of the law and other applicable regulations. The monographic work is devoted to significant from the theoretical and practical point of view problems that are almost undeveloped in the Bulgarian legal literature. The exposition reveals serious and broad legal knowledge. The overall impression is of the work of a fully accomplished and highly literate researcher in the field of private international law, investment law and international arbitration, a jurist with the capacity for independent analysis.

The presented main habilitation thesis represents a significant scientific contribution and a high degree of practical usefulness in times of globalization of economic processes and acute need for versioning and especially towards the transition to renewable energy sources. The same can be said of the other papers proposed for evaluation.

In view of the fact that the applicant has spent a significant part of her professional life in another country, her teaching activities should be qualified as sufficient.

In view of the above, I PROPOSE to the RESPECTED Scientific Jury to propose to the competent body to take a decision for the appointment of Dr. Eminne Ilyaz to the academic position of Associate Professor at Burgas Free University in the professional field : 3.6. International Private Law.

28.07.2024

Prepared the review:

Prof. Dr. Silvi Chernev