

СТАНОВИЩЕ

от доц. д-р Деяна Димитрова Марчева, Нов български университет,
член на научно жури, определено със Заповед № 2594/04.11.2024 г. на Ректора на Югозападен университет „Неофит Рилски“, във връзка с провеждането на защита на дисертационен труд за присъждане на ОНС „доктор“ по научна специалност „Конституционно право“, професионално направление 3.6. Право, на кандидата Елена Златева Хайдушка, докторант в редовна форма на обучение в катедра „Публичноправни науки“ при Правно-исторически факултет.

I. Кратки биографични данни

Елена Златева Хайдушка е придобила степен магистър по право в Югозападен университет „Неофит Рилски“ през 2018 г. Зачислена е като докторант в редовна форма на обучение в редовна форма по докторска програма „Конституционно право“ в Правно-исторически факултет със заповед № 2944/19.12.2019 г. с научен ръководител проф. Георги Близнашки, д. н.

Дисертацията е разработена, обсъдена на заседание на катедра „Публичноправни науки“ от 25.10.2024 г. и насочена към публична защита в съответствие с действащата нормативна уредба. Темата на дисертационния труд е „Законодателна инициатива – роля и функции в Република България“.

II. Обща характеристика и структура на дисертационния труд

Дисертацията е в общ обем 207 страници. Структурата на дисертационния труд включва: увод, три глави, заключение и библиография. Всяка от главите също е вътрешно структурирана в ясно разделени части с акценти върху основните подтеми на труда. Направени са 429 бележки под линия. Библиографията включва 140 съчинения, вкл. монографии, студии, статии, сборници и др., като преобладават източниците на български език.

Авторефератът отразява достоверно структурата и съдържанието на дисертацията.

Дисертационният труд си поставя за цел да анализира законодателната инициатива отвъд традиционното ѝ разбиране като процес на внасяне на законопроект в парламента от конституционно оправомощените субекти, като постави института в контекста на цялостния

процес по създаване и предлагане на законодателни решения и като формулира и обоснове неговите функции. Изследването си поставя редица амбициозни задачи, свързани и с избраната комплексна методология, вкл. историко-правен и сравнителноправен анализ, разкриване на същността на законодателната инициатива и формулиране на основните ѝ функции, извеждане на началния ѝ момент и др.

В първата глава дисертацията очертава предмета на законодателната инициатива и нейния обхват в широк смисъл, като определя началния ѝ момент чрез понятието „идея на законопроекта“.

Втората глава е озаглавена „Право на законодателна инициатива“ и е разделена в две основни части – понятие за законодателна инициатива и субекти на правото на законодателна инициатива. Авторката е избрала да разграничи като две отделни понятия „законодателна инициатива“ и „право на законодателна инициатива“ от гледна точка на етапите в законодателния процес. Понятията са разгърнати в контекста на исторически анализ на правната уредба на института в четирите български конституции и систематизиране на дефинициите в българската конституционноправна теория. Сравнителноправният анализ по отношение на субектите на правото на законодателна инициатива изследването дава възможност да се обсъждат възможности за разширяване на кръга на титулярите отвъд класическите субекти по действащата Конституция.

В третата глава на дисертационния труд са обособени, формулирани и научно обосновани три функции на законодателната инициатива – политическа, обществена и правотворческа.

Като цяло дисертацията „Законодателна инициатива – роля и функции в Република България“ демонстрира задълбочено познаване на българската конституционноправна литература и предходните изследвания, засягащи темата, както и способност за самостоятелно научно изследване.

III. Актуалност и значимост на дисертационния труд

Аспекти на проблематиката на законодателната инициатива са анализирани във фундаменталните трудове по парламентарно право (Борис Спасов, Георги Близнашки) и в отделни научни статии.

Дисертацията „Законодателна инициатива – роля и функции в Република България“ е първото цялостно научно проучване на този конституционноправен институт, разгърнато в цялостен историкоправен, сравнителноправен, догматичен и системно-структурен анализ. Изследването систематизира достиженията на съществуващата научна литература като основа за проблематизиране на актуалните, съвременни проблеми с качеството на законопроектите.

Темата е актуална и значима, тъй като свързва проблема с влошаващото се качество на законодателството с начина, по който се осмисля и прилага законодателната инициатива в България. Теоретичната перспектива към същността и функциите на института на законодателната инициатива хвърля светлина върху част от причините за проблемите в законодателния процес у нас.

IV. Основни приноси и резултати (научни и научно-приложни)

Дисертационният труд допринася към научните изследвания на законодателната инициатива в България, които я разглеждат като цялостен и завършен процес по вземане на политическо решение за създаване на нов закон и неговото преобразуване във формата на законопроект, който се внася в парламента.

Като основни научно приноси моменти на дисертацията „Законодателна инициатива – роля и функции в Република България“ на Елена Хайдушка бих откритола:

- систематизирането на теоретичните достижения на българската конституционноправна литература в изследването на института на законодателната инициатива;
- отграничаване на понятието „законодателна инициатива“ от редица други понятия като „идея на законопроекта“, „право на законодателна инициатива“, както и от различните форми на законодателни предложения, като например предложенията на народните представители между първото и второто четене на закона;
- разграничението на характера на законодателна инициатива в зависимост от това дали се отнася за вътрешната уредба или за имплементирането на правото на ЕС;
- предложената теоретична класификация на основните функции на законодателната инициатива.

Дисертацията има и приноси с научно-приложен характер – значителен брой предложения за усъвършенстване на законодателството. Някои от тях заслужава да бъдат подложени на по-широко научно и обществено обсъждане и да бъдат възприети – например, предложенията *de lege ferenda*, свързани с:

- уеднаквяването на терминологията („законопроект“ и „проект на закон“);
- уеднаквяването на изискванията спрямо законопроектите на МС и на народните представители, и особено справка за съответствието с ЕКПЧ и практиката на ЕСПЧ;
- регламентацията в ПОДНС на задължителен ред и условия провеждане на обществени консултации при изготвяне на законопроекти, които се внасят от народните представители, и др.

V. Оценка на публикации и авторство

Елена Хайдушка представя пет публикации, свързани с дисертационния труд, три от които са публикувани през 2021, 2022, 2023 г., а две са под печат. Две от публикациите са в съавторството, което е индикация за способността на докторантката за изследователска работа в екип. Трите самостоятелни научни статии показват как в различните етапи от докторантурата се е развивало изследването, както и трайния интерес на авторката към темата и нейната практическа приложимост отвъд догматиката (например, правните възможности на бизнеса да участва в законодателния процес).

VI. Бележки и препоръки

Това, което прави впечатление в дисертационния труд са резките преходи между теоретичен и нормативен анализ, като на места връзката между тях изглежда разкъсана, сякаш анализите са правени в паралелни изследвания, а не в една обща методологична рамка.

Следва да бъде открит и положително оценен стремежът на авторката да дефинира различните нюанси на свързани понятия и да проучва сравнителноправни примери, защото това дава възможност за по-дълбочинно осмисляне на темата. Такъв един подход не трябва да е самоцелен, а трябва, от една страна, да държи сметка за отправната точка и целите на изследването, а то друга страна, да не усложнява комуникацията и да не внася объркване относно релевантността на отграниченията или сравнителноправните примери.

VII. Заключение

Въз основа на гореизложеното давам **положителна оценка** и препоръка към Научното жури да гласува за присъждането на образователната и научна степен „доктор” кандидатата **Елена Златева Хайдушка**.

27.11.2024 г.

доц. д-р Деяна Марчева

OPINION

By: Assoc. Prof. Dr. Margarita Nikolova Cheshmedzhieva

Subject: dissertation for awarding an educational and scientific degree

"DOCTOR"

Area of higher education 3. Social, economic and legal sciences

Professional field 3.6 Law

Doctoral programme "Constitutional Law"

Author of the dissertation work: **Elena Zlateva Haydushka**, doctoral student in a full-time form of training at the Public Law Department at the Faculty of Law and History of South-West University "Neofit Rilski"

Title of the dissertation work: '**Legislative initiative – role and functions in the Republic of Bulgaria**'

Scientific supervisor: Prof. Georgi Bliznashki, PhD

DEAR MEMBERS OF THE SCIENTIFIC JURY,

With order №. 2594/04.10.2024 of the Rector of South-West University "Neofit Rilski", I have been appointed as an internal member of the scientific jury for the public defense of the dissertation of Ms. Elena Zlateva Haydushka - a full-time doctoral student in the Department of Public Law Sciences of the Faculty of Law and History at the South-West University "Neofit Rilski" in the scientific specialty "Constitutional Law", professional field 3.6 Law, on the topic "Legislative Initiative - Role and Functions in the Republic of Bulgaria". The opinion was assigned by decision of the first meeting of the scientific jury for the conduct of the procedure for the defense of the dissertation.

I. General information about the procedure and the candidate.

The procedure has been opened and is being conducted in accordance with the requirements of the Law on the Promotion of Academic Staff of the Republic of Bulgaria, the Regulations for its implementation and the Internal Rules for the Development of the Academic Staff at the South-West University "Neofit Rilski".

Elena Haydushka was enrolled by Order No. 2944/19.12.2019 of the Rector of the South-West University "Neofit Rilski" as a full-time doctoral student in the professional field 3.6. Law (scientific specialty "Constitutional Law") in the Department of Public Law

Sciences of the Faculty of Law and History at the South-West University "Neofit Rilski". During her studies in the doctoral program, Ms. Elena Haydushka passed the exams provided for her individual plan and presented her dissertation in completed form. She was enrolled with the right to defend it in 2024.

She has five publications, two of which are co-authored, on the topic of the dissertation. The publications of Elena Haydushka show that the scientific interests and results of her work have become public knowledge of the scientific and specialized circles. Ms. Haydushka has successfully passed an internal defense in the primary unit.

For the preparation of the opinion, I was provided with: a CV, an order for enrollment of the doctoral student, a certificate for successfully passing the doctoral minimums, a dissertation, an abstract, an order for enrollment with the right to defense, a list and copies of Haydushka's scientific publications related to the topic of the dissertation, a declaration of originality of the work.

II. General characteristics of the dissertation work and its contributions.

The dissertation was prepared under the scientific supervision of Prof. Dr. Georgi Bliznashki. The total volume of the work is 207 pages. The structure of the dissertation is well logically constructed and includes: an introduction, three chapters, a conclusion and a bibliography. The chosen structure of the dissertation corresponds to the classical standards for scientific research. 430 footnotes have been made. The bibliography includes 140 sources in Cyrillic and Latin. Research, reports, analyses, studies, bills and decisions of the Constitutional Court were also used for the development of the work. The indicated sources testify to the significant research work of the doctoral student.

The work presented to our attention by doctoral student Elena Haydushka is dedicated to an interesting and topical issue. The topicality of the work is primarily related to the exceptional dynamism of the legislative process and the need to continuously improve the quality of the legislative activity of the National Assembly. Secondly, it should be noted that in the contemporary Bulgarian constitutional-legal literature there is no comprehensive, systematized and up-to-date study of the topic of the legislative initiative.

There is no doubt that the doctoral student knows the problem well and has approached its development in depth and with scientific good faith. It is undeniable that she is familiar with the opinions expressed in the legal doctrine on individual discussion issues related to the topic of the dissertation research. I believe that the object and subject of the scientific research are correctly defined. The methodology used has allowed to achieve the set

goals of the research to the greatest extent and to provide an adequate answer to the tasks solved in the dissertation work.

The main and most significant scientific and scientific-applied results and contributions of the presented dissertation work can be presented in the following way:

1. The work represents the first independent constitutional-legal study of the legislative initiative in the Republic of Bulgaria.

2. The good historical and comparative analysis of the constitutional-legal regulation of the right of legislative initiative deserves attention.

3. The distinction made between legislative initiative and the right of legislative initiative can be indicated as a contribution of the study.

4. The differences between legislative initiative and other forms of legislative proposals are deduced.

5. I positively evaluate the interesting review of the features of the legislative initiative in the USA, on the basis of which the main distinguishing features of the legislative initiative in the presidential republic compared to the countries with a parliamentary form of government are deduced.

6. The analysis and distinction of the three main functions of the legislative initiative, namely - political, law-making and public, is undoubtedly of a contributing nature.

7. The analysis of the differences in the nature of the legislative initiative in our country and in other countries of the European Union deserves admiration.

8. The contribution of the dissertation research is the *de lege ferenda* proposals made to improve the provisions of the Law on Normative Acts and Rules of Organization and Procedure of the National Assembly and deserve the attention of both the scientific community and the legislator.

The submitted abstract is 30 pages long and meets the established requirements. The abstract correctly reflects the content of the dissertation work, reflecting the main results and giving a clear idea of the contributions in it.

The contributions of the dissertation research undoubtedly have not only theoretical but also practical significance. The conclusions contained in the dissertation can be used both in educational and scientific activities in universities, but also by the legislator, which undoubtedly increases their value. Therefore, I recommend that the work be published so that the achieved results can become known to a wider circle of readers.

I can confidently state that the work is an expression of the doctoral student's independent efforts, and the contributions prove the presence of in-depth theoretical knowledge and the ability for independent scientific research.

III. Conclusion

The dissertation work presented for defense before a scientific jury on the topic **"Legislative Initiative - Role and Functions in the Republic of Bulgaria"** contains scientific and applied results that represent an original contribution to science and meets the requirements of Art. 6, para. 3 of the Act on the Development of the Academic Staff in the Republic of Bulgaria and Art. 27, para. 2 of the Regulations for the Implementation of the Act on the Development of the Academic Staff in the Republic of Bulgaria and Art. 53 of the Internal Rules for the Development of the Academic Staff at the South-West University "Neofit Rilski" for the acquisition of the educational and scientific degree "doctor".

Given the above, I will vote positively and propose to the esteemed scientific jury to award the educational and scientific degree "doctor" in professional field 3.6. Law, scientific specialty "Constitutional Law" to **Elena Zlateva Haydushka**.

November 2024
Blagoevgrad

Opinion preparation:
Prof. Dr. Margarita Cheshmedzhieva

SOUTH-WEST UNIVERSITY "NEOFIT RILSKI"
FACULTY OF LAW AND HISTORY

OPINION

By Assoc. Prof. Dr. Deyana Dimitrova Marcheva, New Bulgarian University,
member of the scientific jury, determined by Order No. 2944/19.12.2019 of the rector of
Southwest University "Neofit Rilski", in connection with the conduct of the defense of the
dissertation work for the award of the educational science degree "Doctor" in the scientific
specialty "Constitutional Law", professional direction 3.6. Law,
of the candidate Elena Zlateva Haydushka,
doctoral student in full-time education at the Department of Public Law Sciences at the
Faculty of Law and History.

I. Brief biographical data

Elena Zlateva Haydushka obtained a Master of Laws degree from the South-West University "Neofit Rilski" in 2018. She was enrolled as a full-time doctoral student in the doctoral program "Constitutional Law" at the Faculty of Law and History by order No. 2944/19.12.2019 with scientific supervisor Prof. Georgi Bliznashki, Ph. D.

The dissertation was developed, discussed at a meeting of the Department of Public Law Sciences on 25.10.2024 and aimed at public defense in accordance with the current regulatory framework. The topic of the dissertation is "Legislative Initiative - Role and Functions in the Republic of Bulgaria".

II. General characteristics and structure of the dissertation work

The dissertation has a total volume of 207 pages. The structure of the dissertation work includes: introduction, three chapters, conclusion and bibliography. Each of the chapters is also internally structured into clearly divided parts with emphasis on the main subtopics of the work. 429 footnotes have been made. The bibliography includes 140 works, including monographs, studies, articles, collections, etc., with the sources in Bulgarian prevailing.

The abstract faithfully reflects the structure and content of the dissertation.

The dissertation work aims to analyze the legislative initiative beyond its traditional understanding as a process of submitting a bill to parliament by constitutionally authorized

subjects, by placing the institute in the context of the overall process of creating and proposing legislative solutions and by formulating and justifying its functions. The study sets itself a number of ambitious tasks, also related to the chosen complex methodology, including historical-legal and comparative law analysis, revealing the essence of the legislative initiative and formulating its main functions, deriving its starting point, etc.

In the first chapter, the dissertation outlines the subject of the legislative initiative and its scope in a broad sense, defining its starting point through the concept of "idea of the bill".

The second chapter is entitled "Right of legislative initiative" and is divided into two main parts - the concept of legislative initiative and subjects of the right of legislative initiative. The author has chosen to distinguish as two separate concepts "legislative initiative" and "right of legislative initiative" from the point of view of the stages in the legislative process. The concepts are developed in the context of a historical analysis of the legal framework of the institute in the four Bulgarian constitutions and systematization of the definitions in the Bulgarian constitutional-legal theory. The comparative law analysis in relation to the subjects of the right of legislative initiative in the study provides an opportunity to discuss possibilities for expanding the circle of holders beyond the classical subjects under the current Constitution.

In the third chapter of the dissertation, three functions of the legislative initiative are distinguished, formulated and scientifically substantiated - political, public and law-making.

Overall, the dissertation "Legislative Initiative - Role and Functions in the Republic of Bulgaria" demonstrates in-depth knowledge of the Bulgarian constitutional law literature and previous research on the topic, as well as the ability to conduct independent scientific research.

III. Relevance and significance of the dissertation work

Aspects of the problems of legislative initiative have been analyzed in fundamental works on parliamentary law (Boris Spasov, Georgi Bliznashki) and in separate scientific articles.

The dissertation "Legislative Initiative – Role and Functions in the Republic of Bulgaria" is the first comprehensive scientific study of this constitutional law institute, developed in a comprehensive historical-legal, comparative-legal, dogmatic and systemic-structural analysis. The study systematizes the achievements of the existing scientific literature as a basis for problematizing the current, contemporary problems with the quality of

draft laws. The topic is relevant and significant, as it connects the problem of the deteriorating quality of legislation with the way in which legislative initiative is understood and implemented in Bulgaria. The theoretical perspective on the essence and functions of the institute of legislative initiative sheds light on some of the causes of the problems in the legislative process in our country.

IV. Main contributions and results (scientific and applied science)

The dissertation contributes to the scientific research on the legislative initiative in Bulgaria, which considers it as a comprehensive and complete process of making a political decision to create a new law and its transformation into the form of a bill that is submitted to the parliament.

As the main scientific contributions of the dissertation "Legislative Initiative - Role and Functions in the Republic of Bulgaria" by Elena Haidushka, I would highlight:

- The systematization of the theoretical achievements of the Bulgarian constitutional law literature in the study of the institute of the legislative initiative;
- The distinction of the concept of "legislative initiative" from a number of other concepts such as "idea of the bill", "right of legislative initiative", as well as from the various forms of legislative proposals, such as the proposals of the members of parliament between the first and second reading of the law;
- The distinction of the nature of a legislative initiative depending on whether it concerns the internal regulation or the implementation of EU law;
- The proposed theoretical classification of the main functions of the legislative initiative.

The dissertation also has contributions of a scientific and applied nature - a significant number of proposals for improving the legislation. Some of them deserve to be subjected to a wider scientific and public discussion and to be adopted - for example, the proposals *de lege ferenda* related to:

- The unification of terminology ("bill" and "draft law");
- The unification of the requirements for bills of the Council of Ministers and of the members of parliament, and especially the reference for compliance with the ECHR and the practice of the ECHR;

- The regulation in the Rules of Organization and Procedure of the National Assembly of mandatory procedures and conditions for conducting public consultations when preparing bills submitted by members of parliament, etc.

V. Evaluation of publications and authorship

Elena Haidushka presents five publications related to the dissertation work, three of which were published in 2021, 2022, 2023, and two are in print. Two of the publications are co-authored, which is an indication of the doctoral student's ability to work in a team. The three independent scientific articles show how the research developed at different stages of the doctoral studies, as well as the author's lasting interest in the topic and its practical applicability beyond dogmatics (for example, the legal possibilities of business to participate in the legislative process).

VI. Notes and recommendations

What is striking in the dissertation work are the sharp transitions between theoretical and normative analysis, as in places the connection between them seems broken, as if the analyses were done in parallel studies, and not in a common methodological framework.

The author's aspiration to define the various nuances of related concepts and to study comparative law examples should be highlighted and positively assessed, because this allows for a deeper understanding of the topic. Such an approach should not be an end in itself, but should, on the one hand, take into account the starting point and goals of the study, and on the other hand, not complicate communication and not introduce confusion regarding the relevance of the distinctions or comparative law examples.

VII. Conclusion

Based on the above, I give a *positive assessment* and a recommendation to the Scientific Jury to vote for awarding the educational and scientific degree "Doctor" to the candidate **Elena Zlateva Haydushka**.

27.11.2024

Prof. Dr. Deyana Marcheva