

Issues on Civil Litigations with International Elements (summary)

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In a civil litigation with international elements, the applicable law to the case must be found through the private international law (PIL) rules. However, conflicts on fact-finding of connecting factors as well as the interpretation of the PIL rules may lead difference of opinions between the court and the parties on which law apply. This treatise considers a couple of theoretical and practical issues over the specification of the applicable law in civil procedures.

Firstly, the author raises a question whether the plaintiff be in a position to nominate the applicable law on his/her claim under the principle of *jus disponendi*. As a court cannot give a judgment deviating from the legal claim set by the plaintiff (Art. 246 of the Code of Civil Procedure), one may assume that s/he decide the law to his/her claim. However, the assumption contradicts with the peremptory nature of the PIL rules and no articles of the Code of Civil Procedure suggest the plaintiff's authority on the choice of the law. Thus, the author argues that the *jus disponendi* on the applicable law of the claim is subject to the ruling by the court, but that, at the same time, the court should be obliged to ask the plaintiff for the explanation on the applicable law so as to secure the opportunity to exchange opinions on the applicable law to the claim (Art.149 of the Code of Civil Procedure).

Secondly, the author deals with how to find connecting factors provided by the PIL rules. Some have long argued that the parties of a litigation have, on the principle of party autonomy, the authority to raise and decide the connecting factors, like the facts provided by substantive law (*facta probanda*). However, the author, pointing out that the principle does not accord with the peremptory nature of the PIL rules, refutes the argument and illustrates irrational consequences given by it. For example, where plaintiff A and B agree with defendant C on different connecting factors of one legal claim respectively, the court cannot unify its applicable law of the claim and can never give a consistent judgment to the case. Therefore, the author concludes that connecting factors be found under the inquisitorial principle and, again, it is incumbent for the court to ask for their explanation to the parties on the findings of them (Art. 149 of the Code of Civil Procedure).