CONFLICT RULES FOR DELICTS AND QUASI-DELICTS[1]

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Czech private international law which has been until recently envisaged as exclusively national discipline only with higher number of international sources of law has been coming through fundamental changes connected with entering EC during the last decade. The scope of this contribution is not to analyze the couse of events on the field of PIL in general but to concentrate on one of the last PIL communitarian regulations – n. 864/2007 on the law applicable to non-contractual obligation (ROME II). We will refer to unsuitability of present Czech national legal regulation and on the hierarchy of the conflict rules set in innovative Regulation Rome II we will document how a huge shift the regulation will mean for the practise of Czech courts.

First of all we would like to outline very briefly what we think of delict. It would be more accurate to use the term non-contractual obligation which is used in the regulation Rome II. Non-contractual obligation rises not from the contract but from the breach of a duty defined by the objective law while there is no legal but only factually relationship between the parties. Usually two divisions of non-contractual obligation are distinguished. The first one where the irregularity (wrongfulness) constitutes the essential presumption of existence (unfair competition, defamation) and the second group where contrariwise the irregularity (wrongfulness) is absent.

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In the present Czech law there is only one legal provision dealing with non-contractual obligation – section 15 of PIL Act. This provision concerns not the delicts/torts as such but only their effect – with the liability for damage. It is found insufficient while it doesn't cover delicts as such and also doesn't cover all possible effect only the liability for damage. On the other hand there are delicts where the existence of damage is not the essential presumption such as the unfair competition where the menace of damage is fully sufficient. Entirely improper the rule is for other non-contractual obligations than delicts such as negotiorum gestio, unjust enrichment or pre-contractual liability. The creation of the conflict of law rules has stayed on the Czech doctrine of PIL and on the practise of courts.

The hierarchy of conflict rules in Rome II is more sophisticated. Rome II follows out the trends of the last decades in PIL and puts stress on the principle of autonomy and introduces to the Czech legal system connecting factor for delicts which was unknown – *lex electa* (art. 14). Even though this possibility is substantially limited it stands for a huge innovation. Law elected by the parties represents the primary rule which can be used for both delicts and quasi-delicts. Choice can be performed both *ex ante* and *ex post* in relation to the wrongdoing with the condition that *ex ante* can be performed only between professionals.

Choice of law is succeeded by the general conflict rule which is choosing between *lex loci delicti commisi* and *lex loci damni infecti* for the benefit of *lex loci damni infecti.* It is again the illustration of accent of modern trends in PIL when the scope has shifted from choosing of law optimal for sanction of the malefactor to the law optimal for indemnity of sufferer. The general rule shall be used for all torts/delicts with exclusion of those for which the special rules have been formulated - product liability, unfair competition and acts restricting free competition, environmental damage, infringement of intellectual property rights and industrial action.

The Regulation continues with conflict rules for 3 particular delicts – for unjust enrichment, *negotiorum gestio* and *cupla in contrahendo*

Contemporary Czech conflict rule regulation for delicts and quasi-delicts could be hardly described as sufficient or suitable. Soon it will be replaced by the new, modern legal regulation – Rome II which will constitute a sizable drift. We suppose this drift will lead to the easier application of law and higher certainty of parties concerned.

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