

Summary

Methods of regulation of foreign companies in private international law

The subject of the thesis was the assessment of methods with which legal systems regulate foreign companies. Foreign company was understood as a company which has been incorporated by a foreign legal system and which is recognized by this system as its own. A comparative research was carried out in the dissertation, covering legal systems of selected English (England, United States), German (Germany, Switzerland) and French (France, Belgium) speaking countries, as well as Polish and Dutch law. Additionally the evolution of the law in the discussed area since the nineteenth century was taken into consideration.

Crucial for the thesis was the distinction between the conflict-of-laws and substantive methods. Additionally, further divisions of each of those methods were introduced on the basis of various criteria. The main thesis of the dissertation was that the conflict-of-laws method is used too often and should yield precedence to the substantive method in some cases.

In the nineteenth century the central problem for the international law of companies was the question of recognition of legal personality of foreign companies ("recognition" refers here to the result to be achieved, not to the method to be applied). Recognition was limited by both substantive regulations – which developed earlier – and conflict-of-laws regulations. The basis for the substantive systems of companies recognition formed an assumption that a company, as a creation of a legal system, exists only on the territory where this system is in force. Its existence in another country requires an approving decision of the welcoming state. Conflict-of-laws systems provided, on the other hand, that all companies were automatically recognized if they were organized in accordance with the law indicated by the conflict-of-laws rule.

Among modern conflict-of-laws regulations of foreign companies three groups can be distinguished. First, solutions which subject all legal events and legal relations of a company to substantial law which did not necessarily create the company. The most important instance of the regulations of this kind is the real seat theory. Potentially it removes from authority of the law of incorporation, among others, legal events which include public acts and organizational legal relations – whereas those can effectively be governed only by the law of incorporation. Only within the law of incorporation relevant public acts have been issued and only to this law organizational legal relations have been adjusted. The real seat theory in fact aims to achieve a substantive result, which is determined from the outset - i.e.

to refuse recognition of formally foreign companies or to reclassify them as its own partnerships - under the guise of searching an applicable law. The second category of conflict-of-laws regulations consists in solutions which always indicate parent law of a company as applicable and they include especially the theory of incorporation. In fact these solutions refrain from regulation of corporate relations of foreign companies. The third group consists in limited conflict-of-laws regulations which subject to their own substantive law only selected relations of foreign companies closely connected with their country. They are practically oriented and usually cover relations which are suitable for effective conflict-of-laws regulation, e.g. the question of liability of persons involved in a company, and consequently avoid serious methodological problems.

Two most important categories of substantive regulations of foreign companies are the recognition (understood as the method, not the result) and provisions imposing additional obligations on parties of corporate relations. The recognition consists in extension of legal effects which arose under a foreign legal system to the recognizing system. It should be applied to legal events which include constitutive public acts and to organizational relations. Traditionally substantive recognition concerned only legal personality of foreign companies, but it should be employed also to other legal events and relations of the invoked character. Provisions imposing additional obligations on foreign companies or persons involved in them do not regulate directly corporate relations. Above all, they require from foreign companies disclosure of certain information in the register of the admitting country and appointment of a representative and indication of an address there. They may, however, impose on persons involved in a company an obligation to specifically arrange its corporate relations and in this manner indirectly regulate these relations. Legal sanctions for breach of these provisions may resemble actual consequences of use of the real seat theory, but their application does not result in problems associated with the conflict-of-laws regulation. One may consider as the third group of substantive solutions provisions which directly regulate corporate relations of foreign companies and do that differently than the law of incorporation. They are not often encountered, although it could be argued that some provisions classified above as the limited conflict-of-laws regulations belong here.

Particular attention was paid in the dissertation to the Polish Act on Private International Law. The most important question with respect to the Act is interpretation of the term "seat", which the Act uses to designate law applicable to legal entities, but does not clarify how it is to be construed. The seat should be understood as the seat designated in articles of association – what would bring the Polish solution close to the incorporation theory - and not as the real seat. This results from the case law of the Court of Justice of the European Union, which mandates that a company which transfers its real seat within the European

Economic Area be recognized as the company of the country of its incorporation. Although the Polish Act provides that transfer of the seat within the European Economic Area does not result in loss of legal personality of the company, nevertheless this exception is not broad enough to satisfy requirements of the European law. Functional arguments also speak for the interpretation of the seat as the one designated in the articles of association.