Professor Associate, Dr. Mateusz Pilich © 2020

Introduction to Polish private international law: Specific part

Juridical acts and the form of deeds in private international law

In accordance with Sec. 24 (1) PILA 2011, in determining whether a juridical act has been made, the law applicable to that juridical act shall apply. The unhappy circular wording of the provision should be generally understood as the formation of juridical acts, i.e. the completion of the substantive requirements necessary for it to take the appropriate effect by creating, transforming or dissolving a legal bond between the interested parties. Reference to the 'law governing the juridical act' stands for the law governing the relationship which is set up, transformed or dissolved by a juridical act in question, as for instance the law designated by Sec. 41 where the juridical act refers to the tangible property rights, or Sec. 63 if the relationship concerned is the maintenance obligation. Consequently, Sec. 24(1) PILA 2011 makes it clear that the given situation as the whole will be governed by the same law.

Because the basic requirements of any juridical act include the declaration of will of the parties, therefore Sec. 24 PILA 2011 certainly encompasses, first and foremost, the way of making such declarations, as well as the interpretation of their content. If there are other elements necessary in order to complete a legal transaction, such as entering it into a public register, they are covered by the scope of the discussed provision, too.

An exception to the above discussed rule is Sec. 24 (2) PILA 2011, according to which a party claiming that he or she has not made a declaration of intent, may invoke the law of the state in which he or she has habitual residence, if it appears from the circumstances that it would not be justified to determine the effect of his or her conduct in accordance with the law specified in paragraph 1. The provision in question seems to be an equivalent of Article 10(2) of the Rome I Regulation—

Article 10: Consent and material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Example. In some countries, e.g. in Switzerland, contracts may be entered into by an offeree who has not opposed to the transaction on the conditions set forth by an offeror within a reasonable period of time (see e.g. Sec. 6 of the Swiss Law of Obligations). The offeree habitually resident in Poland may prevent the contract governed by the Swiss law from being impliedly concluded by invoking that, according to the Polish Civil Code (Article 66), an offer may be deemed accepted only through an express statement, unless another way of contract conclusion has been adopted in the course of constant business dealing between the interested parties.