INTERLEX

Advisory and Training system for Internet-related Private International Law

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Abstract: *The project InterLex, admitted to financing with EU grant, aims to develop a platform to provide information, decision support and training on private international law. Part of the platform plans to identify the jurisdiction and the national law applicable to a case law with a «foreign» element. The collection of EU case law needs to use common points able to formalize materials in a single way, so that the retrieval of relevant legal materials work. This method gives a complete case resolution ready to be computerized, focusing on all the literal elements of the analysed material. Moreover we suggest a possible implementation with CREA project, conflict resolution with equitative algorithm.*

1. Introduction[1]

The concept of distance to our days is a concept that tends to be increasingly considered insignificant in relations between human beings. The development of the Internet has now rewritten most of the paradigms in this regard, but failing to cover the various distances that still exist in the differences that affect the relations between the laws of the various states and that, as a result, impact on the administration of justice in order to effectively protect the end user, or the citizen, wanting to ensure an area of freedom, security and justice.

This problem has been going on since the beginning of the network, as it is constantly the object of attention of the European Union, which, in the meantime of its functions and being well aware of the above mentioned panorama, tries to overcome these obstacles present in the world of law, using the technological tool at its service.

In this regard, through the E-Justice Programme, we are trying to give a greater sounding board to the implementation of the various legislative efforts made to achieve a legal common ground.

A starting point is the private international law, where conflict laws are the core. This notion[2] is referred to indicate all the problems originating from the different private relationships that may arise between subjects belonging to different States and precisely from the coexistence in a given relationship of different state legal systems. This situation is particularly evident in the online world, where it is much more likely that people of different nationalities will come to interact, to whom the appropriate rules will apply from time to time.

In particular, within the European Union, it should be borne in mind that Article 81 TFEU[3] sanctions the need for judicial cooperation between the various Member States. In fact, the proper functioning of the European internal market is impossible without the introduction of a common set of rules, i.e. the identification of conflict-of-law rules governing jurisdiction, applicable law and the possibility of incorporating in the national context a judgment issued by foreign bodies, in particular in the main subject matter of the question, the Internet. This is why it is necessary to provide a useful tool for automating and harmonizing the various existing disciplines, at least in the European context.

The global dimension of today's information society is indeed the source of complex and new legal issues concerning private international law related to the Internet, ranging from different sectors that are cross-cutting with each other; it also notes the importance in addressing these legal issues even from a non-legal point of view, or it should be stressed that this new and complex technology is relevant for socioeconomic purposes, since most human behaviour and economic transactions are transferred online.

For this reason we will present InterLex.

2. The project

The InterLex project funded by the European Union's E-justice programme, is conducted , in consortium, by University of Turin (Italy-Leader), Apis Europa (Bulgaria), Alma Mater Studiorum – University of Bologna (Italy), European University Institute (Italy), Masarykova Univerzita (Czech Republic), Council of the Bar Association of Rome (Italy) and Universität Konstanz (Germany). It started in October 2018.

The InterLex project is not, however, a mere database of legislation and case law, but it is an advisory and training system for internet-related private international law; indeed the aim is to create an online tool, where people can take advantage of a product that can guide through the reasoning in the issues relating to the competent jurisdiction and applicable law.

The urgency and need to deal with PIL related Internet does not exclude, at a later stage, the possibility of covering other areas of law, so that the conflict rules will be reduce in the EU.

In order to allow for greater entirety of the tool to be developed, this has been designed as a platform composed of three modules: The Decision Support Module (DSM), the Find Law Module (FLM) and the Training Module (TM).

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2 On the notion of private international law, see Mosconi, Franco/Campiglio, Cristina, Diritto internazionale privato italiano, volume 1, UTET Giuridica, Torino, 2015, pp. 1-53; Ballarino, Tito/Ballarino, Maria Eleonora/Pretelli Ilaria (Eds.), Diritto internazionale privato italiano, CEDAM, 2016, pp.1-16; Barel, Bruno/Armellini, Stefano, Diritto internazionale privato, Manuale breve, Giuffré, Milano, 2017.; Vitta, Edoardo, Diritto internazionale privato, UTET, Torino, 1972.

3 Art. 81 TFUE: «1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases; […] c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction; […] e) effective access to justice; f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States; g) the development of alternative methods of dispute settlement; […]».

The DSM is an interactive expert module that offers users a guided tour, according the relevant rules of legislation and case law, to determine jurisdiction and/or applicable law in a specific case with a «foreign» element. The «Jurisdiction» and «Applicable law» sub-modules determine the State whose courts have jurisdiction on and the State whose national law governs the case, respectively.

The FLM supports the user in retrieving the legal information in a large collection of European, international and national legislation and case law in the area of private international law.

The TM includes a set of training tools on private international law, to be used in taught courses as well as in self training of students and magistrates. It includes both the interactive visualization/consultation of content and practical exercises. It provides access to the DSM and to the FLM. Finally, it provides lecturers and tutors with the necessary functional tools and interactive environment for publishing and interlinking their own training materials, such as articles, comments, lectures, guidelines, answers to questions, sample tests, etc.

Therefore, in the end, through this structure, the objectives to be achieved are the following:

– Capacity building of legal professionals, improving knowledge of legislation and case law in the domain of Internet-related private international law where cross-border judicial cooperation is required;
– Help ensure that the legal frameworks and regulations linked to judicial cooperation are in line with the EU acquis and relevant case law of the Court of Justice of the European Union;
– Increase awareness of judges, legal practicioners and policy-makers of judicial cooperation issues;
– Increase legal awareness of economic operators in the digital economy, and help them identify potential legal issues and access relevant materials;
– Provide free service, mainly directed to legal professionals and law students, but also accessible to all EU citizens.

3. Methodology

The research intends to use the characteristic tools of expert systems, also called knowledge-based systems, «intended to provide functionalities that require specific professional competence».[4] In fact, these systems are able to solve problems in a limited domain as if solved by a human expert; the advantages of the technological choice obviously lie in the large number of sources and possibilities analyzed in order to arrive at a solution properly evaluated and the result of a set of rules indicated by the same human expert and revised from time to time by the system. The structure of such systems is mainly formed by a structural element consisting in a knowledge base and by a functional element, the inferential engine, able to provide answers to questions according to their knowledge base, that is, it elaborates and manipulates the data in possession. For legal purposes, expert systems are used to study the reasoning that can be processed by mathematical methods that lend themselves to being applied in and to law, that is, determining whether a data is a consequence of a «database», or, in logical terms, whether a consequence is deductible from a set of premises.

The first step in the creation of the database is the collection of material, in this case the sources of international private law relating to the Internet will be collected, both national both European reference legislation, as well as relevant case law of the following European Union member countries: Austria, Bulgaria, Czech Republic, France, Germany, Ireland, Italy, Poland, Romania, Spain, Slovakia, and Sweden.

These sources are studied and analyzed, indicating first of all the structural components through the use of tags, as well as deducing the ratio decidendi of judgments; in this way we can proceed to the creation of a vocabulary where legal concepts will be defined useful for the creation of a formal ontology, or a conceptual model based on terminology and existing relationships between them; In this way we can solve some problems of understanding of the law, in addition to obtaining a standardization of the different sources analyzed.

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4   Sartor, Giovanni, L'informatica giuridica e le tecnologie dell'informazione, Torino, 2016, p.313.

Therefore it will be possible to create trees of classification or decision, so that as a search is made the process of information retrieval, based on the logical rules entered, shows step by step, in a guided way, what is the «reasoning», or even better the logic, carried out by the computer.

The final phase of testing will then guarantee the double possibility of refining the process of «reasoning», allowing more and more a better precision of the system, or of detecting any errors in the «reasoning» carried out by the computer with the consequent possibility of intervening and correcting the fallacy. This method gives a complete case resolution ready to be computerized, focusing on all the literal elements of the analyzed material.

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