

A Comparative Study on Involvement of Third Parties in Civil Procedure: On “Isolated Third-Party Counterclaim”

Wei-Yu Chen*

Abstract

In order to ensure the consistency of legal system as much as possible, it is crucial to apply the legal institutes of “involvement of third parties in the legal dispute” actively. This is due to the fact that under Taiwanese Code of Civil Procedure only claimant and defendant fall within the concept of “party”. And except for situations prescribed in Art. 401 of the Code, any other stakeholder will be as a “third party” and not bounded by the judgement rendered in the case in which he or she was not involved. There is a series of provisions in the Code in relation to the involvement of third parties. Among those provisions, the legal institute of involving third party as “party” in a pending litigation is to be given special notice. One could namely see an asymmetry under the Code: While third party could intervene voluntarily in an action by filing suits against the claimant and defendant, and claimant could force a third party to take part in the dispute by expanding his claim. However, the defendant is not explicitly allowed to cross-sue a third party. This leads to the question of whether the “isolated third party counterclaim” is admissible and, if so, which procedural rules should be followed. Aiming at resolving the mentioned problems properly, this article consults firstly the German, Swiss and French law; this comparative approach is justified on the grounds that, on the one hand, the Taiwanese civil procedural law has largely adopted the German law and, on the other hand, the Swiss law, which also belongs to the “German legal family”, has followed to certain extent the French law. Based on results of the comparative study, this article will then reflect on Taiwanese law

* Assistant Professor, College of Law, National Taiwan University.
E-mail: wychen0904@ntu.edu.tw

and propose going beyond the scope of the current statute in terms of recognizing the “isolated third party counterclaim”.

Keywords: involvement of third parties in the legal dispute, legal loophole, counterclaim, connexity, comparative legal study