

Original Article: Comparative Study of the Laws Governing Contracts in Conflict of Laws according to Iran and France Law



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ABSTRACT

Traditionally, the issue of "law governing private international contracts" has long been one of the most significant issues of laws conflict and at present, its importance has increased with the development of trade and commerce. The Iranian legislature has also addressed this issue in the second volume of the Civil Code and has laid down Article 968 of this law as a rule regarding transactions, and apparently accepts the theory of "rule of law at the conclusion place" over contractual obligations, in exceptional cases. It also respects the will role of parties in recognizing the governing law. However, in recent years, in light of recent developments in international law, legislators and, in some cases, jurisprudence have aligned them with legal doctrine and taken steps to adopt the latter theory. An examination of the French legal system indicates that by acceding to the 1980 Rome Convention, France has accepted the most important rule in Article 1 of the Convention, which is the "freedom of contracting parties to private international law to choose the law governing contractual obligations" and, except in cases the exception mentioned in the following articles of this Convention, this rule has caused a great change in the contract law of this country; however, before that, the judiciary of this country, with emphasis on the principles of free economy and capitalism, has more or less paid attention to this important and valuable rule.

Introduction

One of the topics in private international law is the introduction of conflict resolution rules [1]. If the domestic law of all countries was the same and there were no differences, or if there were no relations

between the citizens of the countries and the population of each country living in the territory of that country and travel took place only within the countries, there would be no need for conflict rules. The domestic laws of different countries are different and it has become impossible for all citizens to stay in their own country, so the

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legislative authorities of each country should use the methods of resolving the laws conflict, and we intended to do the same in this research [2]. Let us become acquainted with the resolution of conflicts of law, and the purpose of applying these methods, as has already been revealed, is to find a competent law for the settlement of disputes and disputes, which may be the law of the country of the court or foreign law. When enforcing the court ruling in any country, it should be considered justifiable and respectable.

The issue of conflict of laws arises when a private law relationship relates to two or more countries through the intervention of one or more external factors, in which case it is essential to know which country's law will govern the legal relationship in question. For instance, if we assume that a French man and woman living in Iran want to get married in our country, we are facing a problem here, because the man and woman are French, they are related to France. On the other side, considering Iran, another point that should be noted here is that the issue of conflict arises only in the stage of exercising and enforcing the right, and logically precedes the issue of having the right or ability to enjoy, as the issue of conflict It will not be raised because the conflict of laws arises when a person has a right in international life and it is desirable for us to determine the law governing that right [2-4].

The causes of laws conflict are indeed such items as the development of international relations and exchanges, the possibility of neglecting national legislation, the possibility of implementing foreign law, and the existence of differences between the domestic laws of countries. In some cases, we notice the weaknesses of the Iranian legal system, and in other ones, we consider the strengths of the Iranian legal system, given that there has not been sufficient and complete research on conflict resolution methods in Iranian law. This issue has received less attention, so it seems essential to conduct a comprehensive research in this field, and due to the importance of handling foreign national lawsuits in the courts and raising various legal issues in this area, issues related to conflict resolution methods have been concerned by lawyers. It is essential to resolve the conflict of laws in addition to other issues [5].

The issues related to conflict resolution, such as conflict resolution methods in Iran, should be

studied independently. Therefore, in this work, we have tried to fully study conflict resolution methods in Iranian law. In addition to knowledge of conflict resolution laws in Iranian law, a basis for more extent research activities and more in this field and an independent work on the implementation of conflict resolution methods in Iranian law, we know that in the case of relations with countries, private disputes will arise between natural and legal persons of private law. In these circumstances, there is an urgent need to strengthen private international law. In order to resolve the disputes over the private rights of the citizens of the mentioned countries in the international arena, the opportunity to live and continue studies in Iran is considered to conduct a study so that we can use it in case the citizens of other countries can defend themselves in the courts if there is a problem with the citizens of other countries. Regarding the significance of handling the claims of foreign nationals in the courts and raising various legal issues in this field, issues related to the conflict of laws have been considered by lawyers [6].

Importance of the Issue

The importance of the issue of conflict of laws is quite obvious. In the contemporary world, it is not possible for any nation to be confined within the four walls of its homeland. Since in no threshold of time, there are relations between countries and their citizens expanded so much. Trade exchanges and the movement of individuals from one country to another raise numerous international issues that must be resolved based on the principles of the rules of private international law and the conflict of laws. Because in any case where there is a conflict between the laws of several countries, a kind of integration and coordination should be created between the laws to find out to what extent each law should be implemented in a timely manner and considering the development of relations between citizens of different nations it should solve this problem [7].

Research question

In this article, the researcher seeks to answer this question:

What do the law governing contracts mean in conflict of laws in the law of Iran and France?

To answer the above question, the hypothesis is formed: Conflict rules in the Iran-France system seem to have their own basis and result, and their legal rules are based on the principle of sovereignty of states, and rules such as the rule of law of the place of conclusion or place of contract or the law of the country of the parties to the contract. The purpose of this research was to better understand the principle of the rule of will in contracts in Iranian and French law.

Research background

Little research has been conducted on the topic studied by the current investigation. Here are some works that are more relevant to the subject. Works such as Afzali (2010), Babaei (2005), Jordan (2010) are among the works that are considered as the research background, however what distinguishes this research from the mentioned works is that although a study has been performed as a law governing contracts in conflict of laws in Iran, the present one is new for the following reasons:

1. So far, the conflict of laws in Iran and France has not been conducted comparatively.
2. So far, cases of sovereignty of the state and sovereignty in conflict with Iran and France laws have not been studied [8].

Therefore, the present research is a comparative study of the laws governing contracts in conflict of laws in the law of Iran and France.

Unilateral Theory

In the late 19th century, some legal writers, particularly Niedner and Schenelle in Germany, argued that the role of private international law was merely to determine the scope of law in place. No legislature had the right to a legal relationship with an element with external elements. By recognizing the incompetence of the law of the seat of the court, it also presupposes the jurisdiction of foreign law, because such a determination of jurisdiction is contrary to the principles of international law.

And based on this theory, which derives from the principle of equality of sovereignty of states,

each state determines the scope of its laws and has no right to interfere in the sovereignty of other countries by determining the jurisdiction of the laws of other countries¹. This has both a legal and a rational basis [9].

In other words, the rules for resolving a conflict must be unilateral, such as the penal code of a country which defines what acts are considered a crime and punishable², and the tax laws of a country that specify which persons and property are subject to tax. Further, basically no financial institution is taxed for enforcing a foreign law [10].

In France, Ney Bouye (2019) defended this theory. He, who considers the issue of conflict of laws as a part of public law and as a conflict of sovereignty, believes that although the subject of conflict resolution rules is related to private law, the purpose of these rules, is to determine the rule of law and determine the power of states. Private international law is similar to constitutional law in this respect because, as constitutional law discusses the various laws of a country and their competence and relations, in conflict of laws, the competence and sovereignty of states are at stake. When foreign law is enforced in France, it is because the French ruling power has recognized it as competent and recognizing that jurisdiction in that case means that the French government has recognized legislative authority for the foreign government. The issue of conflict of laws, then, is indeed the recognition of the competence of the ruling powers and the determination of the realm of sovereignty [11].

It is in this context that Ney Bouaye considers the rules of citizenship and the rules of conflict resolution to be the same, and believes that just as the role of French law on citizenship is limited to determining who is a French citizen under what circumstances, so in particular, the legal relations of individuals in international life is limited to the declaration of international jurisdiction of French law or its denial and in no way interferes with the jurisdiction or incompetence of foreign laws [12].

However, the unilateral theory based on the theory of state sovereignty has been challenged. It is now accepted that the conflict of laws is not the

¹ In this case, Von Bar writes: "Imposing rigidity on a state that does not want it is contrary to the principle of equality of states, it means claiming supremacy of authority by granting oneself a supranational right." This is the order of a supreme court to a subsequent court declaring it incompetent to hear the merits of the case. "While governments have to respect each other for reasons of necessity, there can be no imposed authority."

² For instance, according to Article 693 of the French Code of Criminal Procedure, crimes in which one of the elements has been committed in this country are considered to have taken place in France territory.

conflict of sovereignty, and the judge in the context of dealing with an international legal relationship must resolve the matter by resorting to the best and most appropriate law. In fact, the aim is to protect the interests and interests of international trade in general, and the interests of states are of secondary importance, as is customary in private law [13].

According to Professor Rieger, when the rule of dispute resolution of the seat of a court in a case of denial of national law introduces the law of a foreign country to resolve the disputed issue, it is not an encroachment on the sovereignty of that foreign state but is merely the acceptance of a formal legal system. It is another formal law. The target audience of rule of conflict resolution like other national laws is primarily law enforcement agents, who are empowered to accredit a foreign legal resource under certain conditions [14].

What is misinterpreted as the material scope of validity of a foreign legal rule is in fact the declaration of foreign law as enforceable in the official court system. This issue is not much different from that of identifying the provisions or documents of foreign administrative contracts. When a government declares its foreign legal authority competent to settle a case under a conflict resolution rule, it only addresses the agents under its command. Conversely, no government has the right to order the foreign legislature, even indirectly, and the conflict resolution rule does not have such a goal. Faced with such criticisms, proponents of unilateral conflict resolution have sought to find a basis other than the sovereignty of governments. "The law is always in the form of a decree, so in order for it to exist, it must determine its audience," says the Italian writer Quadri (2019), justifying the need for unilateral conflict resolution rules. Every sovereign state freely determines the scope of its laws. "Since the rule of law is the product of certain experiences, it must at least be confined to the framework of its action, so it is useless to apply the law in cases where it is not intended [15].

However, this view also represents a part of reality and is somehow related to the theory of sovereignty. What was said was the basis of a one-sided theory in the eyes of its proponents. Now, we have to accept this theory, assuming the incompetence of the law of the seat of the court,

what is the mortal duty of the reviewer and what decision should he make?

Universalism absolute Theory (Classical Theory)

Some proponents of the one-sided theory argue that in cases of incompetence of the law of the courtroom, the judge should refuse to hear the case and declare incompetence. In fact, the incompetence of the law of the seat of the court in such cases will lead to the incompetence of the relevant court. The deep connection of this form of unilateral theory with the theory of sovereignty of states is evident. Each country determines the scope of its law, and the inability of the court to enforce the rules of the court on an international legal relationship causes the judge to simply ignore the jurisdiction of the court and leave it unanswered. In such a case, the beneficiary must completely refrain from pursuing the issue or raise the issue in another country that has in any case provided a solution to the case. Undoubtedly, the expansion of such a procedure in the establishment of conflict resolution rules will weaken the international relations of individuals and private international law can not play its role as it should lead to more appropriate solutions.

New unilateral theory

Some unilateralists do not exempt the judge from hearing the case in cases of incompetence of the law of the seat of the court, and have suggested the following solutions to fill the resulting gap:

A) Interpretation of bilateralisation de la règle de conflit unilaterale

Sometimes the rules of conflict resolution, although unilaterally set with their mutual interpretation, the ruling law can be determined if the law of the court is not competent. Article 3 of the French Civil Code is a clear example of such rules, which applies to the status and qualifications of French citizens, even if they reside outside France. It should be noted that this legal article only solves the issue of the status and qualifications of French citizens and does not specify the law governing the status and qualifications of foreigners residing in France. However, French jurists have accepted that since the status and competence of French people, even outside of France, is governed by their own law, the principles of justice and fairness dictate that

foreigners residing in France be subject to their own law in terms of status and competence [16].

Another example in this case is Article 3 of the French Law of 24 July 1966 on commercial companies, according to which commercial companies based in France are subject to French law. This article does not seem to specify the duties of commercial companies headquartered outside France, but with the mutual interpretation of this article, it is accepted that commercial companies are in principle subject to the law of their place of business (both abroad and in France)³

Despite the practical benefits of adopting this procedure, it is not possible to resort to it in all cases. In other words, not all unilateral rules can be interpreted bilaterally.⁴ Such a situation is conceivable in the following two cases:

First, when the conflict resolution rule relies on the restrictive reservation contained in a multilateral conflict resolution rule. The best example of this is in the rules laid down by governments which, by using the condition contained in some international conventions (in the field of conflict of laws), allow the deviation from a multilateral rule contained in these conventions. For instance, according to Article 3 of the Second Treaty of the Geneva Convention of 11 March 1931 on the settlement of certain cases of conflict of laws concerning checks: "A person's eligibility to accept an obligation under a check shall be determined by the law of his country and if the law of his country is competent matter, the recent law will be enforced. However, if a person who, in accordance with the law referred to in the preceding paragraph, has no qualifications signed the check in the territory of a country which is deemed qualified under its provisions, his obligation will be valid. "Each of the High Contracting Parties may refuse to identify and validate the regulatory contract on the basis of a check issued by one of its nationals which is not valid in the country of the Contracting Party through the application of the preceding paragraph of this Article."⁵

Using the probation granted under the paragraph 3 of Article 2 the Convention under Article 63 of the Law of 1 March 1961, Belgium states: "Acceptance of an obligation on the basis of a check by a Belgian abroad shall not be recognized in Belgium unless by law Belgium; the person is eligible to commit in this way. Therefore, a Belgian can not commit himself abroad by check unless in accordance with the provisions of his law. Article 63 "A unilateral unilateral conflict resolution rule is mutually incomprehensible and a check signed in Belgium or abroad by a foreigner who is not legally qualified but qualified under Belgian law (or the foreign law where the check is signed) is considered valid.

Second: When the rule is alternative, it means that two or more communication factors are put together so that each is considered in the absence of the other. For example, according to Article 310 of the French Civil Code, dated July 11, 1975, divorce and separation are subject to French law if the couple is a French citizen (paragraph 1) or resides in France (paragraph 2) and finally in case no foreign law does not have jurisdiction to resolve the issue of divorce or separation when the French courts have jurisdiction to deal with divorce by separation.

This article created many interpretive problems in France. It seems that the position taken in it is inspired by the accepted judicial procedure after Rievère [14].

In this case, the French Supreme Court, in a judgment of 17 April 1953 in the case of the divorce of an Ecuadorian couple and a French woman, both of whom lived in Ecuador, ruled that due to the couple's different nationalities - and therefore the impossibility of implementing their joint national law - the law of joint residence is applicable.

However, most legal writers do not consider such an interpretation of Article 310 of the French Civil Code to be justified. Basically, according to the text of paragraph 2 of this article and the desire of the legislator; it can be stated that the divorce of foreign couples residing in France, regardless of

³ The same situation is evident in Article 24 of the German Civil Code, according to which the German Art Law governs the inheritance of all German citizens, regardless of their place of residence. This article has also been interpreted by the German courts in such a way that the inheritance of foreigners will be governed by their own law.

⁴ Such rules are called by Professor Rigo, *Le regle de Connie de lois exclusivement Unilaterale*.

⁵ To study the March 19, 1931 Geneva Conventions on the Czech Republic. *Legal Journal of the Office of International Legal Services of the Islamic Republic of Iran*, No. 13, Fall and Winter 1990, p. 361.

their nationality (joint or different), is subject to French law. Consequently, not only the divorce of foreign couples residing in France even has joint citizenship under French law, the issue of divorce of foreign couples residing in France with joint citizenship becomes impossible under foreign law, thus referring the issue of divorce of foreign couples residing in France (and having foreign citizenship) to French law (paragraph 2 of Article 310 of Civil Law). The impossibility of a bilateral interpretation of Article 310 of Civil Law can also be deduced from the examination of paragraph 3, according to which if any foreign law does not consider itself competent to resolve the issue, the implementation of French law is justified and the decision on the possible implementation of a law is justified. According to Mr Gothot, a German judge is enforcing UK law on non-German couples living in the UK because the law is governed by the British legislature, which governs the personal relationships of couples living in the UK. Sometimes the issue of paying attention to the tendency of foreign law is also raised and imposed by the legislator himself. As in the case of Article 310 of the French Civil Code, paragraph 3 of which stipulates the application of French law if foreign law is unwilling. However, this solution can be criticized in the following two ways:

- **Creating a vacuum:** Enforcing a foreign law that sees itself as competent may seem like a reasonable solution at first, but in many cases, it is not untying. In fact, it is possible that no foreign law will accept its jurisdiction to resolve the disputed issue. In this case, we return to the first place again, because on the one hand, the law of the seat of the court deprives the ability to solve the problem, and on the other hand, there is no other law that wants to be applied to the case. Of course, in such cases, in principle, by appealing to the general jurisdiction of the law of the seat of the court, the gap can be filled and the issue resolved.⁶ However, it seems that the implementation of the law on the seat of the court is not a suitable solution when this law,

contrary to foreign laws in the scene, has nothing to do with the proposed case [16].

B) Multiple competent laws

Contrary to the previous case, it is probable that the judge of the court, facing the incompetence of the law of the seat of the court, will face two or more foreign laws related to the subject, all of which consider themselves competent to resolve the controversial issue. For example, in the court of country "a", an issue is raised in relation to the personal situation of a citizen of country "b" and a resident of country "c". Based on law in country "a", it is not competent to enforce the matter and does not state which country should be dealt with in accordance with the law of which country. In such circumstances, the law of the home country and the law of residence of the beneficiary may both consider themselves competent to resolve the issue. This is where the judge again faces a stalemate without any guidance in choosing one of the two laws. However, some legal writers extend the solution to various citizenships to actual and practical ones. In his opinion, the judge in each case should consider which laws are more dependent and more effective [18].

This solution complicates the problem, despite the claim of facilitation, because the judge has to comment on the degree of dependence of the case on the law in much more uncertain circumstances than in the case of citizenship. In addition, such a method requires the judge to choose a law according to the criteria accepted in the court system, which is a kind of mutual interpretation. In such cases, it should be assumed that if the relevant conflict resolution rule were to be enacted bilaterally, which foreign law would be declared competent and the same law should resolve the issue. It is in fact a kind of reciprocity of the conflict resolution rule. Unilaterally is the seat of the court. For example, in the case of a divorce from a French woman who is married to a Belgian man and the couple resides in the United Kingdom, the French courts have jurisdiction primarily under Article 14 of the French Civil Code⁷. However, French law is

⁶ In case of non-acceptance of jurisdiction determined by the foreign law determined by the conflict resolution rule, the court also raises the issue of creating a vacuum and believes that the principles of public order prevent the proposed legal relationship from remaining unresolved; therefore, it should be implemented by law, the seat of the court which has any connection with the case to be resolved.

⁷ According to the theory of effective citizenship, in the case where a person has two or more nationalities (positive conflict of laws regarding citizenship and presumably his personal status should be resolved according to his law) the judge should consider citizenship as a criterion that is real and effective. Recognition of this citizenship is done by assessing the degree of a person's affiliation with a country. In fact, determining

not applicable neither the conditions of paragraph 1 of Article 310 (French joint citizenship) nor the conditions of paragraph 2 of this article do apply to couples residing in France⁸ [19].

In this case, the French judge must refer to paragraph 3 of Article 310 and determine which foreign law they are willing to enforce at the scene. The results of the study show that the English law as the law of residence of couples and the Belgian law as the national law of women both consider they are competent. In such a case, there is a high probability that the judge will enforce English law (the law of residence of the couple): A law that applied before the law of July 11, 1975 and according to the Riviere ruling on couples with different nationalities.⁹ This method is in fact an indirect appeal to the system of reciprocity of conflict resolution rules.¹⁰

The Emergence and Historical Development of Conflict of Laws

Old Italian school

The Italian school, also known as the Roman school of commentators, emerged in the late twelfth century. This is the first school of conflict of laws, because before this, government rule did not exist in the modern sense and the causes of conflict of laws were not ready and complete. But the reason why the issue of conflict of laws first arose in Italy was that in the northern cities of this country there were markets that expanded trade relations between these cities (Bologna, Florence, Madonna) and other cities. On the other hand, the laws of each differed from one city to another, so whenever, for example, a merchant went from one city to another for a contract, he faced the issue of conflict of laws. With the increase of these cases due to the expansion of trade relations between cities, the issue of the possibility of implementing non-local law was raised. In this way, the causes and conditions of the conflict of laws were realized. In

such a situation, Italian legal advisers must come up with a solution [20].

Among the laws of that time, Roman law, which was considered the perfect symbol of human reason, had a prominent position. Therefore, legal advisers documented their views on the texts and phrases. By searching for Roman law, they found the text or phrases and expressed their opinion by relying on it and with the help of a margin. Hence, the school of commentators is also called the school of annotators. Among Roman law commentators, Acorus (1260-1182) is the most famous. He is best known for the margin he wrote in 1228 on one of Justinian's fourth-century Christian laws. The law, known as the Connecticut, governs the resolution of conflicts between Christians and others. This account uses Emperor Justinian's decree that "all nations under our grace and mercy must convert to Christianity" in such a way that non-Christians are subject to their own laws. In his famous footnote, Akors reaffirms the principle of conflict of law that "if any of the people of Bologna has gone to Maden, he should not be considered a subject of Civil Law." On this basis, Akurs emphasizes the possibility of enforcing non-local law. Thus, he began the first school of conflict of laws. Later commentators elaborated on it, this school is also known as Boloni School, the founder of this school is Barthel, because he expressed the principles of the beliefs of this school in simple language [20].

The characteristics of this school are remarkable in two ways: In terms of the method of work and in terms of the solutions it has proposed. In terms of method, the Italian school is a school of law. Its followers did not put forward any hypothesis or principle, but merely raised issues scientifically and sought appropriate solutions. In their view, the value of all laws is the same, and every law has the potential to be enforced outside its territory. Regardless of any previous hypothesis, then, it should be observed that in which cases the laws are required to be personal and in which case the laws are local or territorial. The Italian school has an

effective citizenship is a matter of subject matter, not a verdict, i. e., the judge in each case decides what citizenship is effective based on the reasons expressed. Rec. Dr. Seyed Jalaluddin Madani, "Private International Law", Tehran, 1990, pp. 61-62.

⁸ According to Article 14 of the French Civil Code: "A foreign national, even if he does not reside in France, may be summoned to a French court to fulfill the obligations of a contract concluded in France with a Frenchman. A foreign national can also be summoned to a French court to fulfill his contractual obligations abroad to a French national.

⁹ Regarding this opinion, refer the book, p. 18

¹⁰ According to Bourel, Loussouarn in the implementation of Article 310 of the French Civil Code, in principle, in many cases there is a possibility of multiplicity. In such cases, the jurisprudence certainly applies the rule of conflict resolution of a country that is closer to French law. *Ibid.*, No. 165, p. 213. It is also proposed to enforce a law that is better in line with the views of the parties and by creating a substitute conflict resolution rule.

analytical aspect; that is, the scholars of this school examined the cases one by one and determined the verdict of each case separately. Another aspect of the universality of this view is that solutions to problems were not limited to a particular city. The school's proposed solutions include: In general, later commentators believed that in order to resolve a conflict of laws, one should first classify and analyze the disputes and then select and implement the competent law. In this way, they managed to discover several categories of connections and offer solutions that are still valid [11].

The Italian school was able to find the basic rules for the issue of conflict and to announce some principles of conflict resolution. By discovering some of the categories of communication and some legal divisions, as well as solutions that are still valid in private international law, such as the separation between formal and substantive laws, local government on the document, following the law of the crime, was able to take the first step. Establish a system for conflict of laws.

French school

The school, which originated in the 16th century, has two well-known representatives, the Dumoulin and the Dumoulin Joint Venture, who discovered descriptions and used the principled method in the Joint Venture to address the issue of the territoriality of laws [10].

Dumoulin (1500-1566), descriptions problem

Some consider Dumoulin to be a follower of the Italian school, although there are similarities between his work and that of the commentators' improper maintenance. However, Dumoulin should be considered the first founder of the French school, and it is in terms of initiative that he has expressed in determining the law governing contracts and has declared that the parties have every right to pass another law instead of the law of the contract. The government chooses on its contractual obligations. Dumoulin also applied the theory of the rule of will to the financial regime of marriage, arguing that it was subject to the law of the parties. That is, it included the subject in the category of contracts, and thus implicitly raised the issue of description for the first time. Dumoulin also discusses the divisions related to laws and generally divides laws into two categories related to persons and laws

related to property. Of course, this division does not include all laws, and Dumoulin does not explicitly define the principled realm of laws, which is what Jantre has been able to do [8].

Derjantre (1519-1590): The emergence of territoriality of laws principle

Derjantre is the first jurist to fully apply the principled or dogmatic method. Bertani, who lived in Jantra, had a feudal system, and a characteristic of hegemony, a keen interest in local customs, was a prominent feature of the land. Under the influence of these conditions, the doctrine in Jantera became principled. That is, you do not pay much attention to the theoretical and practical dimensions, but only think about the good or bad results of the problems. According to Derjantre, the conflict resolution rule should not harm political interests. Brittany's main interest at the time was to maintain legal independence. Affected by feudal ideas, Jantre became interested in the principle of territoriality of laws. Contrary to the general Italian doctrine, the doctrine was in the general genre, because based on a previous hypothesis, the principle of the expediency of the land or the locality of laws, he said that customs are local and govern all persons and property in the place. But outside of that, they have no executive power. Doctrine in the gentile is inferential, that is, it derives its solution to the conflict of laws from general theories based on the acceptance of a previous hypothesis.

Of course, Jantre does not consider this principle absolute, but believes that in some limited cases. The custom of the main residence, ie personal laws, should be allowed to be applied. And this is essential both in terms of facilitating trade between different countries and regions and in terms of observing the general principles of justice and the rights of individuals. But these are only in laws that apply exclusively to individuals, and if the laws are mixed, they are subject to local law. Therefore, whenever a minor wants to sell his property, his eligibility is also subject to the law of the place of property, not personal law. For the first time, Jantre used the principled method in its complete conflict of laws, dividing the law into two categories, personal and objective, which have long been the basis of studies of conflict of law. However, the system in Jantera was not without flaws. In recognition of the communication

categories, for instance, he included personal circumstances in a limited number of subjects that covered only purely personal matters. The fact is that not all legal issues can be divided into two categories, and this dual division has led to the disregard of categories such as legal acts and events, which he has arbitrarily placed in the category of property to solve his problem. But since the adoption of the doctrine in the gendarme leads to the principled application of the law of the judge, it has had a considerable effect on the jurisprudence of France [2].

Dutch school (17th century): Determining the basis for the implementation of foreign law

The Dutch school, like the French school, advocates the principle of local law and allows the application of foreign law only in a few cases. The main representatives of this school are Paul Watt (1677-1610) and his son Jean Watt (1714-1647) and Ulrich Huber (1694-1636).

Although the Dutch scholars, like Jantre, believed in the principle of the locality of laws, in some ways they corrected the shortcomings of the Jantre doctrine and corrected it. The Dutch school, for example, has dealt with categories of legal actions and events independently. According to Dutch scholars, the fact that the laws relate to the status and competence of individuals are overseas stems from the fact that these laws are imposed on individuals and should be durable and should not change as individuals move. But the most important feature of the Dutch school is finding a basis for enforcing foreign law. The Dutch school, unlike the French school, which considers the exceptions to the principle of locality of law as a requirement of the general principles of justice and the enforcement of personal law as the right of individuals, does not regard these exceptions as a legal obligation, but as a principle of international decency.

Method of Selecting Appropriate Law in Conflict Resolution

Conflict of law is one of the most important issues in private international law and arises when a private law relationship is linked to two or more countries through the intervention of one or more "external agents". In such cases, it must be determined which of these laws will govern the

legal relationship in question. Therefore, the cause of conflict of laws is the involvement of one or more external factors. The case is that if a legal relationship is related to only one country, such as the issue of marriage of two Iranian citizens and the place of marriage is in Iran, this legal relationship will be subject to domestic law because no external factor is involved. However as soon as a foreign agent is involved in a legal relationship, such as where the contract is concluded outside Iran, then we will face the issue of conflict of laws.

An external agent may be the occurrence of the property being traded or a legal act or event abroad or the preparation of a document in a foreign country, and it may also be the foreign nationality of individuals or their residence abroad. It should also be noted that sometimes one external factor is involved in the issue and sometimes several external factors. The more external factors involved in a legal relationship, the more complex the issue becomes and resolving the conflict of laws involved in the issue means finding a competent law that and if this legal relationship prevails, it will be more difficult. Another point is that the issue of conflict of laws is raised only in the stage of exercise and enforcement of the right and is logically related to the issue of having the right (ability to enjoy) as the issue of eligibility is logically prior to citizenship. So, if a person is deprived of the right to enjoy in international relations, the issue of conflict will not be raised, because conflict of laws arises when a person has a right in international life and it is desirable for us to determine the law governing that right; for example, a foreigner whose government does not recognize polygamy in its law cannot exercise the right to have more than one wife in Iran under Article 1049 of the Iranian Civil Code. In such cases, there is basically no conflict because the conflict occurs if there is a right and we want to apply the competent law among the different laws, and obviously in the absence of a right (incompetence) conflict of laws that the exercise of the right will be subjectively eliminated.

Obstacles To The Application of General Rules of Conflict of Laws

These obstacles can be divided into two forms: The lack of a relevant factor and the lack of a verdict or the lack of clarity of the verdict in the law of the country related to the lawsuit.

Lack of relevance factor provided in the conflict resolution rule

The context for the realization of this obstacle usually occurs in cases of personal status of persons whose sentences are subject to the law of their respective countries and the said persons are stateless for some reason. As if they were refugees in another country or were considered stateless due to differences in the attitudes of legal systems towards citizenship, like a British person who has Iranian citizenship due to his birth in Iran by his respective system, but his citizenship is English by the Iranian legal system, this issue is recognized according to the law of his respective government. If the Iranian legal system is confronted with a claim for inheritance of a person who has become stateless, which is possible for reasons such as birth, asylum, revocation of citizenship or renunciation of citizenship, how should the Iranian court determine the rule for resolving the conflict? Some countries, due to the main separation of legal systems into the systems of accepting the citizenship agent and the residence agent, in the event of encountering inheritance claims, adopt a residence agent to link personal status and his inheritance to determine the conflict resolution rule. In such countries, the residence agent is designated as the successor to the citizenship factor in the personal case, but the Iranian legal system faces the problem of inheritance of a stateless person due to the non-acceptance of the residence agent as a secondary agent by Iranian law. Some scholars argue that, given the history of such a view in France, the judge of the court's law should act on the case in question. The difference in determination of the sentence, depending on the country in which the person is located, also causes many differences in the status of his inheritance. In any case, according to the Iranian law approach, there is no choice but to accept the liaison agent of the seat of the court and the agents of Iranian law in the case of the deceased stateless inheritance claim, and according to Iranian law, his claim will be settled.

Lack of verdict or lack of clarity of verdict in the law of the country related to the lawsuit

Sometimes, in the case of inheritance of a foreign national who has died in Iran, the court, according to Article 7 of the Penal Code, considers the law of the respective state to be in force in the main laws

of inheritance. In the opinion of the Iranian court, no ruling should find that this lack of access to the ruling is not due to the failure of the litigants to cite and prove foreign law; rather, it is due to a substantial inadequacy of the law of the country of the deceased. Either there may be no verdict or there may not be a clear verdict where the Iranian court will not reach a clear solution in cases such as the existence of obstacles to inheritance or the realization of inheritance and the determination of beneficiary heirs. In this case, the judge is obliged to try to find the verdict according to the duties of the interested heirs; otherwise, he must determine the verdict according to the law of the seat of the court as is the case in the law of other countries. In Switzerland, pursuant to paragraph 2 in Article 16 of the 1988 Federal Law, in private international law, Swiss law applies if the content of the foreign law is not justified.

Conclusion

A private international law lawsuit is a lawsuit in which at least one of its elements relates to the legal system of another country. In a case of private international law, the rule is accepted when the judge hearing the case reaches the law governing the case, and he applies it and issues a verdict accordingly. Despite this rule, in most legal systems, including the Iranian legal system, there are cases in which a judge cannot apply the law governing a case. These cases, which in the Iranian legal system are referred to as obstacles to the implementation of the competent foreign law, include: a) Spontaneous replacement of the law of the headquarters; b) Public order; and c) Fraud against the law. Substitutions to the law of the headquarters include specifying the absence of foreign law, the parties agreeing on the non-implementation of the applicable law and the failure to provide the provisions of the competent foreign law by the litigants. Public order, as another obstacle to the implementation of foreign law, is a deterrent that hinders the implementation of foreign law in the country but despite the fact that public order in domestic law, the principle is reduced. However, in private international law, it is an exception. In other words, public order has a limited and slight effect on the rights acquired under the competent law. Fraud against the law is another obstacle to the implementation of competent foreign law. Here, one changes the jurisdiction of

another law by changing the communication factor. Obstacles to the enforcement of foreign judgments were another issue addressed. Foreign judgments include judgments issued by foreign courts and judgments of foreign arbitrators. Both sets of sentences must be identified before execution, and the methods for identifying both sets of sentences are different and consist of specific systems. Recognition of a foreign sentence does not mean that it is enforceable. Rather, they must meet the requirements set out in Iranian domestic law. In any case, the lack of legal requirements is an obstacle to the enforcement of foreign judgments. In cases where a foreign law is competent under Iranian law to resolve a conflict and its implementation is generally prescribed, and the plaintiffs cite it, the Iranian judge must make it his or her own judgment, but before that he or she must determine whether the provisions of that law are applicable in Iran or not. Foreign law is applicable if it is not contrary to public order and if it is contrary to public order will not be implemented to the extent that it opposes. For example, if the law of a foreign country to permit incest, such marriages between the citizens of that country will not be allowed in Iran, although in principle the law of their respective countries is competent, just as polygamy which is prohibited for Iranians in France for violating the public order of that country. However, according to French conflict resolution rules, the personal status of foreigners is subject to their national law. Public order therefore prevents the application of foreign law, even if it is governed by the law of the court or by international treaties. The issue of public order is explicitly stated in Article 975 of the Iranian Civil Code.

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