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Research Article

THE ROLE AND SIGNIFICANCE OF PERSONAL LAW IN PROTECTING THE RIGHTS OF A NATURAL PERSON

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ABSTRACT

"Private law of a natural person" is the category from which private international law begins. "Personal law" is considered a determining factor in the description of the legal status of a citizen of another country or a citizen of this country in a foreign country. Issues of the legal status of foreigners represent an integral part of the conflict regulation of their legal and legal capacity and are traditionally considered a central part of private international law.

KEYWORDS

Human rights; natural person; right of residence; right of residence; refugees, indigenous peoples; Subjectivity; Identification; Uzbekistan.

INTRODUCTION

The protection of the rights of an individual is considered to be a situation that occurs when third parties violate the rules, conditions and requirements provided for the implementation and protection of the rights that he has within the framework of his legal capacity. For this reason, the civil legislation of many countries stipulates the rights that make up the content of the legal capacity of natural persons, and in private international law, the scope of these rights is defined within the personal law of a natural person. The rights and the methods, conditions, grounds and procedures for their protection defined in the

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legislation of one country may not be compatible with the legislation of another country, or a different procedure may be provided for foreigners in the territory of this country, which, in turn, may cause legal conflicts between the legislation of different countries. emits To solve this problem, to define and regulate complicated relations with the foreign element, universal and private rules, norms, and connectors of different content and form are used.

Today, it can be seen that there are different approaches to the application of the rules related to personal law in determining the legal status of foreigners, determining their rights and legal capacity, and resolving disputes related to family-marital relations involving them. In the questionnaires conducted, it can be seen that the majority of the respondents gave different answers to the questions such as in which cases the application of the personal law of an individual is valid, the importance and necessity of the application of the personal law, and in what ways the personal law is applied in the protection of rights.

According to the Uzbek scientist T. Umarov, the legal and legal capacity of foreign citizens, immunity of the state, relations on foreign trade agreements, copyright to literature published abroad, and the legal and social status of persons in the territory of a foreign country are related, mainly, "personal law " is of great importance to solve regulatory issues. I.Rustambekov also agrees with this opinion and states that it is very necessary to define a personal law in order to protect the rights of individuals when the subjects of relations on the Internet are in the territory of different countries.

According to Western scientist P. Riccardo, "fundamental rules aimed at protecting the rights of a natural person should be expressed in the international process by general prohibitions, in this matter the determination of the personal law of a natural person is of particular importance, enforcement decisions of specialized international courts, the place of residence or current residence of a natural person it is important to take into account the circumstances of the provision of on-the-spot execution and its execution"

Although the influence of the field of human rights on the institutions and norms of private international law is not large in terms of volume (the interaction of these two branches of law has occurred during the last 10 years), it is significant. In particular, human rights have been the basis for changes in the judicial practice and legislation of many countries in the field of conflict law. For example, in Greece, Law No. 1329/1983 of 1983 made a number of changes to Articles 15-22, 30 of the Civil Code (1940), which regulate marriage and family relations, and these changes mainly concern the application of personal law regarding the mother or father. aimed at rejecting the rule and ensuring gender equality in this regard. With the ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women in 1979 by Japan, an amendment was made to the Law adopted in 1989. Prior to that, this Law mainly applied the provision of national legislation regarding the father. A similar change was introduced to the Spanish Civil Code in 1990 with Law 11/1990 reforming the Civil Code on the principle of non-discrimination based on gender. The new Austrian Law on private international law is described as "gender neutral". In Italy, in 1995, based on the requirements of the Constitutional Court to amend a number of provisions that contradict the principle of equal rights of men and women, a Law aimed at regulating the field of private international law is adopted (Italian "Reform of private international law"). In the case law of Germany, it is emphasized that

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the provision of determining the superior legislation depending on the nationality of the land in private international law is contrary to the German Constitution.

The field of human rights was also the basis for the reform of material law norms complicated by the foreign element. Legal status of foreign citizens and legal entities, foreign investments, civil legal aspects of currency relations, rights to intellectual property objects, marital and family relations, labor relations - among them. It is noted that there has also been some development in the field of cross-border bankruptcy institutions with human rights implications relating to the protection of property rights of debtors and creditors.

State bodies for resolving human rights disputes also have a significant impact on the formation of national legislation of individual countries.

Institutions of international civil procedure are also undergoing changes in this area. In particular, Article 17 of the Convention on Civil Procedure (The Hague, March 1, 1954) dedicated to the institution of caution judicatum solvi, as well as Article 20 on the provision of free legal assistance to foreign persons, securing claims for debt or in commercial and civil cases As a measure, Article 26 on the issues of applying a precautionary measure of deprivation of liberty to foreign citizens is directed to the protection of human rights to a fair trial.

Provisions regarding the institution of caution judicatum solvi are also reflected in Article 16 of the Convention on the Legal Status of Refugees (Geneva, July 21, 1958), entitled "Right to appeal to a court." According to it, "every refugee with a place of habitual residence shall have the same rights as citizens in matters of appeal to court in the territory of the contracting states, including exemption from court costs and provision of legal aid (caution judicatum solvi)".

In addition, the field of human rights has had a significant impact on the work of arbitration courts and international commercial arbitrations.

The field of human rights allows to set perspectives on the following institutions and concepts of private international law (as well as directly affecting them):

1. Public order. Despite the ambiguities of this institution, its boundaries can be more clearly defined in many ways with the help of human rights. It is noticeable that this aspect is not paid attention to in many cases in the private international law of Uzbekistan. Accordingly, if human rights differ from the rights enshrined in the Constitution of Uzbekistan or international treaties, the consequences of applying the laws of other countries or the consequences of recognizing or enforcing the decisions of foreign courts (arbitrations) are presumed to be contrary to the public legal order of Uzbekistan. In this regard, the Law "On Implementation of the German Civil Code". If we turn to Article 6, it is noted that "Legal norms of another country that conflict with the principles of German law shall not be applied in Germany. Also, such rules shall not be applied in cases where they conflict with fundamental rights."

2. The institution of "Bypassing the law" in conflict of law. It should be noted that this institute does not have a serious importance in conflict law. In fact, the essence of the traditional theory of "circumvention of the law", which seeks to control human rights too much and prevents the implementation of legal actions, is not very compatible with the principles of human rights.

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3. Institute of immunity of international organizations and foreign countries. Inflexible absolute immunity of foreign countries and international organizations may conflict with basic legal institutions such as justice. In recent years, the problem of holding foreign countries that violate human rights to account has become an urgent issue.

For example, the decision of the Constitutional Court of Uzbekistan on September 9, 2021 regarding the violation of the constitutional rights enshrined in Article 362 of the Criminal Code of Uzbekistan of J. Artikov, a citizen related to foreign citizens and stateless persons carrying out entrepreneurial activities, plays an important role in the national legislation.

4. Alternative conflict norms and lex benignitatis conflict principle. One of the important aspects in the codification of jurisprudence or private international law is the application of the principle of lex benignitatis: in deciding the question of the applicable law, the courts are required to follow the law favorable to the validity of the legal relationship or the status of the person. As a result, either the law of the foreign country or the lex fori may apply, depending on the situation. For example, in accordance with the rules of favor negotii, favor matrimonii, favor infantis, favor testament, it is possible to protect the rights of subjects of international trade and civil transactions in courts. In this process, alternative conflict norms play an important role as lex benignitatis, which allows to choose one or another law.

5. Interpersonal collisions. On the one hand, such collisions are common in Eastern and African countries. Western principles of private international law and human rights are widespread in these countries. On the other hand, it is inevitable that such conflicts are related to human rights, which makes it necessary to study this relationship more deeply.

6. Somits gentium. Rejecting the issue of human rights as the internal affairs of states and taking into account the global application of human rights, the field of human rights gives a new meaning to this term: the emergence of "international respect" of states for each other, not the discretion of states, but the observance of human rights. it can be considered that it depends on the necessity.

7. Institute of territorial and extraterritorial application of lex fori and lex extrneae. This institution is a means of implementation of the legal policy applied by the states in relation to foreign persons and legal relations complicated by the foreign element. This institution can be used both for the protection of human rights and for carrying out activities against them;

8. Institute of mutual collision.

9. Institute of reciprocity. This institute, along with the next three institutes, plays an important role in determining the legal status of foreign individuals and legal entities in the field of application of the lex fori rule.

10. Institute of retorts;

11. Institute of National Regime;

12. Institute of the mode of creating the most favorable conditions;

13. Institute of non-discrimination against foreign citizens and legal entities.

Analysis of the impact of the human rights field on each of the concepts and institutions listed above can be a separate research object.

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Finally, the field of human rights also affects judicial practice. As mentioned above, in some developed Western countries, constitutional courts have recognized that conflicting norms that give priority to the national law of the husband or mother are contrary to the principles of human rights.

In particular, in Uzbekistan, the field of human rights has been referred to several times in legal relations related to the foreign element. In particular, the head of Alta Vetta Limited Liability Company Sh.Botirov of the Constitutional Court of Uzbekistan in the case of foreign citizens and stateless persons permanently living in the territory of Uzbekistan and stateless persons, Article 18 of the Law of Uzbekistan "On Forensic Expertise" of the Constitution of Uzbekistan

It is possible to note the decision to check compliance with Article 44. This decision is indirectly related to private international law.

At this point, on the appeal of citizen F. Eshmatova, representative of the Oliy Majlis on human rights (ombudsman), the Constitutional Court of the Republic of Uzbekistan dated July 2, 2021 No. and on additional measures to improve the compensation procedure 2019 year Articles 43 and 47 of the Constitution of Uzbekistan "On the procedure for expropriation of land plots and compensation to the owners of real estate objects located on the expropriated land plots" approved by the decision No. 911 of November 16 It is also worth mentioning the Decision on determining compliance with Articles 54.

In accordance with Article 53 of the Constitution of Uzbekistan, the owner may be deprived of his property only in the cases and according to the procedure provided for by law. Article 54 stipulates that the owner can own, use and dispose of his property at will. According to Article 166 of the Civil Code of Uzbekistan, it is allowed to limit the rights of the owner only in cases provided for by law. In accordance with Article 197 of this Code, the right to property is fulfilled by the owner at a voluntary pace, by the owner's unilateral decision to decide the fate of the property, by confiscating (buying) the property based on a court decision, as well as to legal documents canceling the right to property. shown to be largely void. According to Article 37 of the Land Code, a plot of land owned by natural persons, including foreign natural persons, together with an object of the trade and service sector or a residence and another building or a part of a building, is not taken away for state and public needs, but re- will be available for purchase. This matter is determined to be implemented according to the decision of the people's deputies of the regions and Tashkent city councils or the decision of the Cabinet of Ministers. Paragraphs 43 and 47 of this Regulation were found to be in accordance with the Constitution. That is, the rights and interests of foreign citizens and stateless persons permanently living in the territory of the country or carrying out business activities are protected. In addition, the recommendations and instructions of the Plenum of the Supreme Court of Uzbekistan No. 14 of 24.09.2004 "On judicial practice in disputes related to ownership rights to privately built houses" in private international law for privately built houses by foreign citizens on the basis of collision binders also applies.

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