Limitations of Civil Rights of Foreign Nationals in Iran during the Years 1991-2011

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Abstract
The realization of citizens’ rights with the approach of considering the private rights of foreign nationals is one of the most important foundations of civil society in the political system of countries. This issue is placed within the framework of the principles and rules governing each political system and laws and regulations on foreign nationals have been approved in this respect. Islamic Republic of Iran, due to being in the vicinity of a number of countries in crisis such as Iraq and Afghanistan, has been extensively faced with the presence of foreign nationals and has taken steps to organize it. These actions have been influenced by the teachings of Islam and have enjoyed the laws of other countries and international law and Islamic Republic of Iran intends to provide the private rights of citizenship for the foreign nationals living in this country within the framework of the rules and principles of the system by offering a new model. Accordingly, various political and security institutions and organizations are active in this regard and the study of this issue can provide the ground for better identifying the measures taken in the area of the foreign nationals’ private rights of citizenship in the country.

Keywords: Citizenship rights, civil rights, citizenship, foreign nationals, acquired rights, special rights.

Introduction
In Article 961 of the Civil Code, Iranian legislature has assumed the enjoyment of foreign nationals from private rights, or in terms of the mentioned Article, the civil rights. However, in accordance with this Article, some exceptions are made regarding the aforementioned principle, which are as follows:

• The rights that the law has explicitly limited to Iranian citizens or has explicitly taken them away from foreign nationals.

• The rights relating to personal status, which have not been accepted by the law of the respective government of the foreign national.

• Special rights that are created solely from the viewpoint of Iranian society.

In this respect, foreign nationals are faced with some restrictions in the areas relating to personal status, possession of immovable property, garnishment, special rights and acquired rights arising from personal status and property, which their detailed and accurate review can be helpful for many of the challenges in the realization of the civil rights of this group of people. Given these explanations, this study seeks to answer this question as to what restrictions the domestic legislator has predicted regarding the principle of the enjoyment of foreign nationals from civil rights. Also, what are the ways to ensure the enjoyment of foreign nationals from the civil rights provided in the law?

It seems that in addition to anticipating appropriate legal regulations in relation to the civil rights of foreign nationals, the realization of the civil rights of citizenship for this group of people is highly dependent on properly performing the duties assigned to relevant organizations including Ministry of Interior as the custodian of this matter. In order to confirm this view in the present article, after examining the information gathered and with regard to the general principles of law and

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enjoying legal and logical reasoning, the results of the studies conducted are extracted and finally, strengths and weaknesses of domestic laws and the solutions to improve them are presented.

**Personal status**

In the countries following the legal system of Common Law like Britain and America, personal status of foreign nationals is subject to residence law and in some other countries, such as France, which have Roman-Germanic legal system; it is subject to the national law or the law of their respective government (Rostami, 2013: 145). In the Iranian legal system, according to Article 7 of the Civil Code, “foreign nationals residing in Iran must obey the laws and regulations of their respective state in terms of the issues relating to personal status and their capacity and also inheritance laws within the limits of treaties”. Further, according to Paragraph 2 of Article 961 of the Civil Code, foreigners cannot enjoy from the rules relating to the personal status of Iranian law, which have not been accepted by the law of the respective government of the foreign national. By "enjoy" in this Article, it is meant “to benefit”, in other words, “capacity for vindication” (Parvin, 1999: 279).

In legal doctrine and discussion of personal status, some writers with the existence of a treaty and some other without the need for a treaty consider the foreign nationals as subject to their own national law while the factor of religion does not have a role here:

1) According to the opinion of most writers and jurists, personal status of foreigners residing in Iran is subject to their own national law without the need for a treaty (Nasiri, 1996: 198).

   In this connection, it has been stated that “if a country makes the personal status of the foreigners subject to the law of the place of residence and makes the foreign law enforcement dependent upon having a treaty and reciprocal behavior, this is a sign of backwardness” (Ja’fari Langroudi, 1994: 94).

2) In contrast to the above viewpoint, some writers believe that “if such a treaty has not been concluded, the citizens of the foreign state shall be subject to Iranian civil law unless when it has not been accepted by the law of the respective government of the foreign national. In this case, the law of their respective state is observed, like a second marriage”. (Emami, 1994: 102: 2)

Instances of personal status are numerous but what frequently happens in practice is the issue of the marriage and divorce of foreign nationals. Regarding marriage, article 1043 of the Civil Code states that “marriage of a virgin girl is dependent on the permission of her father or paternal grandfather even if she has reached puberty…” So, marriage of the virgin girl in Iranian law depends on gaining the permission of father or paternal grandfather. In contrast, Article 80 of the Civil Code of Afghanistan states that “whenever a mature girl marries without the consent of her father, the marriage contract is valid and necessary”. Additionally, according to Article 71 of the same law, the marriage of a girl under 16 years of age needs the permission of her father and in the absence of the father, the court with jurisdiction issues the permission of marriage (Ahmadi, 2006: 78).

**Acquisition of immovable property**

In the set of domestic laws, the rule is the prohibition of the possession of immovable property by foreign nationals. However, in the following cases, the legislator has decreed for the prescription of possession:

1) According to Article 8 of the Civil Code, “immovable property of which the foreign nationals in Iran take possession in accordance with the conventions is subject to Iranian laws in every respect”.

2) According to Article 967 of the Civil Code, “the movable or immovable patrimony of foreign nationals located in Iran is subject to the laws of the respective government of the deceased
just in terms of the main laws such as the laws relating to the determination of heirs and the amount of their share of inheritance and also identifying the part that the deceased could possess according to the will”.

3) Based on Paragraph 17 of Article 2 of the law relating to the duties of the Ministry of Foreign Affairs approved in 1985, “in enforcing the provisions of Article 1, Ministry of Foreign Affairs will be responsible for the following basic tasks: …

17- Review and announcement of the agreement with the acquisition of the thing itself or the benefit of foreign agencies and acquisition of foreign nationals in Iran and performing the tasks related to the acquisition of the Islamic Republic of Iran in foreign countries”.

4) According to Note 7 of revised Article 148 of Real Estate Registration law ratified in 1991, “investigating the demand of foreigners requires the observance of the formalities of acquisition regulations of foreign nationals in Iran”.

5) According to the Single Article of the law concerning the protection of the reformation and modernization of worn out tissues around the holy shrines of Imam Reza (AS) and Hazrat-e-Masumeh (AS) ratified in 2005, “given the need to renovate the worn out tissues and expedite the implementation of reformation and modernization projects of the tissues around the holy shrines of Imam Reza (AS) and Hazrat-e-Masumeh (AS) which are called "Holy Shrines" in this law, the following provisions must be implemented:

1. Department of Housing and Urban Development is authorized to permit the Muslim foreign nationals (subject to the reciprocal behavior of the respective country) to purchase and acquire a maximum of four percent of the lands located within the boundaries approved in Holy Shrines plan from the lands and properties belonging to itself or the private sector or other sectors for the construction of residential projects, compliance with their approved rules and regulations and utilization. Note_ Licensing the purchase and acquisition mentioned in Paragraph 1 and also subsequent transfers in the name of Muslim foreign nationals are dependent on the approval of a commission composed of the representatives of the Ministry of Information, Ministry of Foreign Affairs, Ministry of Housing and Urban Development, Ministry of the Interior and the representative of Astan Qods Razavi or the holy shrine of Hazrat-e-Masumeh (AS). Secrecy of the mentioned commission is assigned to the Ministry of Housing and Urban Development.

Deprivation of foreigners from obtaining security

In accordance with Article 144, obtaining security from foreign nationals has specific conditions:

- Issuance of the order for the security of foreign nationals requires the request on the part of the plaintiff and as long as he does not have such a request, the court does not issue a judgment for providing security.

- Request for obtaining security is accepted by the end of the first session of the hearing and only from the defendant who is an Iranian national. Thus, if the defendant is a foreign or stateless citizen, such security cannot be claimed.1

- The plaintiff must be a foreign national. 2

- Security is intended for the legal fees and honorarium and does not include other losses.

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1 It should be noted that in such cases, Articles 109 and 110 of Civil Procedure Act have predicted a security called the security of false claim for every defendant and plaintiff, whether Iranian or foreign.

2 In this case, in accordance with Article 989 of the Civil Code, “if the plaintiff is a dual national and holds Iranian citizenship in addition to foreign nationality, his foreign nationality is not acceptable and he is considered an Iranian citizen”.

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Special rights

According to Paragraph 3 of Article 961 of the Civil Code, foreign nationals are deprived of the “special rights that are created solely from the standpoint of Iranian society”. In determining the instance for Paragraph 3 of Article 961 of the Civil Code, the following points should be considered:

1) First, it should be noted whether the examined instance is liable to Paragraphs 1 and 2 of Article 961 or not. If yes, we do not examine the third paragraph. If the studied problem is not an instance of the aforesaid paragraphs, then the inclusion or exclusion under Paragraph 3 must be analyzed.

2) The second question is whether this instance is in compliance with the provisions contained in Paragraph 3 of Article 961 or not. The mentioned paragraph merely covers the cases in which a right has been created from the standpoint of Iranian society and this, of course, has not been stipulated in the laws. Consequently, if the monopoly of a right in relation to the Iranian nationals is not legal according to the stipulated provisions, but this monopoly is based on the tenor of the law (analogy of priority) or unity of criterion or votes of the unity of procedure, the mentioned right can be considered as an appropriate and defensible instance of Paragraph 3 of Article 961 of the Civil Code not Paragraph 1 of this Article. For example, one of the deprivations of foreigners is the deprivation from the ownership of immoveable property, over a certain amount. According to Note 2 of Article 987 of the Civil Code, the reason for this prohibition is to prevent foreigners’ economic domination. Now, if this reason, i.e. prevention of foreigners’ economic domination, is also applicable to another issue other than the possession of immovable property, which has not been stipulated, there is no choice, but to accept the same judgment. Some writers have provided the same opinion and have stated with regard to the unity of criterion of Note 2 in Article 987 of the Civil Code that “foreigners do not have the right to possess immovable property if this issue leads to foreign economic dominance” (Qafi & Shari’ati, 2011: 239). Therefore, it can be said that matters such as the investment of foreign nationals, their entry into economic competition or even the possession of movable property by them in Iran are forbidden if they cause the economic domination of foreigners over the country and their deprivation from those rights is documented in Paragraph 3 of Article 961 of the Civil Code.

Acquired rights of foreign nationals over personal status and property

An acquired right is a right that has been created according to the competent law and is acceptable and respectable not only in the country of origin, but also in all the other countries.

According to “Pile” and “Niboyet”, if a right is established in a country based on the competent law, this right as an acquired right along with its effects should be recognized in other countries, even if such a right is unknown in the recent country (Arfa’niya, 2010: 159: 2). Indeed, the issue of acquired rights in private international law provides for the case where a right at two different times (for whatever reason) is related to two different types of legislation.

In the nineteenth century in England, Dicey used the concept of acquired rights as a basis for the foreign law, which is referred to as the Theory of "Anglo-American". According to this theory, compulsory power of the foreign law results from the need to observe the acquired rights, based on which the judgment pronounced by the foreign court creates a right for the winning party, which is the acquired right and this right should be respected in other countries and should be the source of effects and be enforced at the right time. In Dicey’s view, when the country's law tells the judges to

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3 It should be noted that in all these steps, we must pay special attention to the exceptionality of the deprivation of foreigners from civil rights and thus deviate from the rule concerning the enjoyment of foreigners from civil rights merely in cases where there is a convincing reason.
enforce the foreign law, what they actually implement is not the foreign law, but is the right that has been acquired under the law of a foreign country (Almasi, 2008: 166).

Niboyet also believed that if the legal relationship created in one country is not valid in other countries, relationships will not develop at the international level and all relationships at the local level will be limited (Arfa’niya, 2010: 156).

Against the acquired right, there is the inalienable right. An inalienable right is the right that the state considers for its nationals to maintain the relationship between people. In this respect, the relationships of individuals cannot interfere with their inalienable rights and since this right has been established to support people and maintain the public and social order, it is absolute and considered among the general rules (Alborzi Waraki & Rahbari, 2012: 124). Hence, an inalienable right is the right that every citizen of a state enjoys innately or acquisitively and no one can violate or destroy it, except in accordance with the law.

Remarkably, some writers consider acquired rights and inalienable rights as synonymous and argue that “realizable rights are the rights that enjoy the performance bond and are also called subject rights or inalienable rights, but the second term is more common (Ja’fari Langroudi, 1997: 232).

However, the acquired right can have multiple instances according to its subject but is more considered in the field of personal status and property (Rostami, 2013: 123). The acquired right over property such as the ownership right or the right of lien over material property and the right over literary, artistic, industrial and intellectual property in the case of non-material property. Regarding the personal status, the right that a person has acquired as a result of marriage, divorce, will, child adoption or parentage can be considered among the acquired rights. Acquired rights as any other right can be invoked in the courts if they enjoy the necessary conditions for their reliability. On the other hand, the implementation of the acquired right in the host country may be faced with some obstacles.

**Conditions for the validity of acquired rights over personal status and property**

Today, most of the instances of acquired rights along with their effects are respected in the legal system of different countries in case of having the certain conditions. The conditions for the validity of acquired rights in the Iranian legal system can be outlined as follows (Almasi, 2008: 144):

1. Establishing the acquired right according to the competent law: an acquired right for having validity must be established based on the law that is considered as competent by the conflict rules of the country in which the right is effective. For example, if someone trades in another country over the immovable property located in Iran and according to the law of that country, conducting a transaction in a place other than the location of the occurrence of the property without registration in Real Estate Office is merely sufficient for the transfer of ownership, the document that has been set in this way is not enforceable in Iran because according to Iranian law, the competent law on immovable property is the law of the country where it occurs or in other words, Iranian law (in the example cited).4

2. Establishing the acquired right in compliance with all its conditions: an acquired right must be created completely and in compliance with all the conditions necessary for its formation. In other words, all the conditions that are required in accordance with the law of the country where the right has been established must be observed although the law of the country in which the right is

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4 Article 966 of the Civil Code

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enforced in due time does not necessitate the existence of some of those conditions for creating that right (Almasi, 2008: 245).

3. Absence of the opposite right in the country where the court is located: If in the country where the court is located, a right is created against the acquired right, based on the theory of opposite rights, effects are not applicable to this acquired right since according to the conventional rule in private international law, the acquired right is respected as long as no right is established against it. For example, if before the enforcement of a decree (involving the acquired right) issued by a foreign country, a judgment against the mentioned decree is issued by one of the courts of Iran, the country where the court is located (Iran) prefers the judgment issued by the national courts to the judgment issued by the foreign courts.

**Barriers to the validity of acquired rights over personal status and property**

Implementation of the acquired right in the host country may be faced with some barriers, which are as follows:

1. Opposition of implementing the acquired right to public order: Public order in domestic law is a broader concept than the public order in international relations. “In domestic laws, all the mandatory rules depend on public order, but in international relations, a greater degree of this order is considered and the rule that jeopardizes the vital interests of society or is opposed to the ethics respected by people is considered against the public order. Otherwise, imperativeness of the law alone will not hinder the enforcement of the foreign law. No one doubts the imperativeness of the laws concerning the personal status while foreign law enforcement in this regard is unquestionable (Katousian, 2002: 97).

2. Acquiring the right through fraud to the law: It is accepted that no one can create the conditions to escape the prohibitions prescribed by the law through taking advantage of the rights granted to him under the laws of a country. Fraud to the law in the context of conflict of laws materializes when individuals, by taking advantage of the right to choose granted to them according to the law of a country to makes changes in their status, property location or place of concluding the contract, make themselves covered by the law other than the law that is supposed to govern the issue. In other words, fraud to the law is the avoidance of litigants or one of them from the competent law through changing the legal relations.

   Substantially, the material element, namely the change in the dependency element of citizenship or residence or change in the legal relationship and the spiritual element, i.e. trying to escape from the competent law, provide the ground for the development of fraud to the law. The spiritual element of fraud to the law cannot be easily verified and this is the duty of the judge to examine the details in each case and attain the intention of individuals. This may cause the application of personal preferences and tastes (Sheikh al-Eslami, 2003: 12-18).

**Invoking the acquired rights and demanding its implementation**

Invoking the acquired right in the country where the court is located is possible in two ways:

1. The person directly invokes the law that has created the acquired right and demands the issuance of the judgment based on the foreign law.

2. The person invokes announcement or Establishment Act involving the acquired right, which has been issued by a foreign court, according to the foreign law.

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5 The issue of opposite rights in private international law is the result of the positive conflict of laws, the judge of each country, in dealing with the opposite rights, always prefers the law of according to which his respective government. (Almasi, 2008: 147)
Enforcement of foreign judgments involving the acquired right in each country may be accepted with some conditions. In the Iranian legal system, enforcement of foreign judgments is based on the law of civil judgments enforcement. In this regard, domestic laws consider the right created outside of Iran as having an effect, but have made its enforcement subject to the laws of Iran. However, foreign judgments are enforceable in Iran only if the country issuing the judgment recognizes the judgments issued by Iran as valid, in accordance with its own domestic laws or treaty or the court decree.

In accordance with Article 169 of the law of civil judgment enforcement, “civil judgments issued by foreign courts are enforceable in Iran if they meet the following requirements unless another order has been prescribed in the law:

- The judgment is issued by a country that according to its laws, treaties or agreements, the judgments issued by the courts of Iran is enforceable in that country or the country shows reciprocity regarding the enforcement of the judgments.
- Provisions of the judgment should not be contrary to the laws relating to public order or morality.
- Enforcement of the judgment should not be contrary to the international conventions signed by Iran or against the private laws.
- The judgment is definite and binding in the country where it has been issued and should not lose its validity in legal terms.
- No judgment should be issued by the courts of Iran against the judgment of the foreign court.
- Addressing the subject of dispute should not be exclusive to the courts of Iran according to Iranian laws.
- The judgment should not be about the immovable property located in Iran and the rights pertaining to it.
- Order for the enforcement of the judgment should be issued by the competent authorities of the county issuing the judgment.

Iranian courts have so far commanded for the enforcement of numerous judgments issued by the foreign courts. For example, following the request for the enforcement of divorce, Tehran Family Court addressed the issue on December 28, 2001 and enforced the California court order with the argument that the judgment of divorce issued by California Supreme Court has indicated the declaration of ending the marital relationship and the implementation of religious divorce has been confirmed by the Islamic marriage notary (Rostami, 2013: 151).

Conclusion

In legal doctrine, various opinions have been expressed regarding the law governing the personal status of foreign nationals. Generally, some writers with the existence of a treaty and some other without the need for a treaty consider the foreign nationals as subject to their own national law.

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6 For example, in England, the conditions for the enforcement of foreign judgments include the following: 1) they must be issued by a competent court; 2) they should not be against the public order of England and they should not be incompatible with the principles of natural justice (such as the possibility of defense for defendant. (Bordbar, 1986: 163)
7 Articles 169 to 179 of the law of civil judgments enforcement
8 So far, the Iranian government has signed several international agreements in which the above-mentioned issue has been predicted, such as sailing and accommodation contract between Iran and France dated 1966, amity and accommodation treaty between Iran and Austria dated 1965, Iran and Russia Agreement dated 1995 and Iran and Azerbaijan Agreement dated 1998.
while the factor of religion does not have a role here. Yet, it should be noted that although no reference has been made in the civil law to the classification of foreigners based on religion, this can be inferred from a set of Iranian statute law. As previously mentioned, however, factor of religion can in some cases lead to the abuse of law. Thus, the relevant institutions should pay adequate attention to this issue.

Another citizen right in relation to the foreign nationals is the issue of garnishment. In accordance with Article 144 of Civil Procedure Act, the citizens of foreign states, whether they are the main plaintiff or they enter the dispute as the third party, must entrust appropriate security, at the request of the litigant, to pay for the damage to which they may be sentenced for legal fees and honorarium. Request for obtaining security is accepted only from the defendant who is the citizen of Iran and by the end of the first session of the hearing. However, in the following cases, if the foreign national is a plaintiff, he is exempt from giving the security: 1) if in his respective country, Iranian nationals are exempt from giving such security; 2) claims relating to bills of exchange, promissory notes and check; 3) counterclaim; 4) claims that are officially documented; 5) claims that are presented through official advertisement including objection to the record and claims against the stopped.

Further, foreign nationals will be deprived of special rights that have been established merely from the viewpoint of Iranian society. In this respect, if the monopoly of a right in relation to the Iranian nationals is not legal according to the stipulated provisions, but this monopoly is based on the tenor of the law (analogy of priority) or unity of criterion or votes of the unity of procedure, the mentioned right can be considered as an appropriate and defensible instance for the special rights, such as the prohibition of any kind of financial ownership by the foreign nationals (except for the immovable property) that causes the economic domination of foreigners.

As to the issue of the acquisition of immovable property, Iranian law considers the ownership of immovable property located in Iran with the condition of having the general conditions of capacity as specific to Iranians. But in addition to these conditions and based on Acquisition Regulations ratified on August 16, 1949 and Regulations on the possession of immovable property by non-resident foreign nationals in Iran approved in 1995, foreigners need to have the license of Iranian government. In this respect, it seems that in the laws on the acquisition of foreign nationals in Iran, the Iranian lawmaker has sought to eliminate the ground for foreign domination over the country's natural and economic resources through land ownership or control it, by broadening the concept of “foreign” regardless of its concept of private international law.

Acquired rights over personal status and property as the most important instances of the private rights of foreign nationals are among the issues discussed in this study. In this regard, it seems that we can predict solutions to further protect the acquired rights of foreign nationals by regulating the application of the rule of public order through specifying the instances of public order, interpretation of its meaning and reasonable and documented use of it, regulating the application of the principle of fraud to the law by setting specific terms for verifying the fraud and its application exceptionally and also, compensation for the damage inflicted upon the foreign national due to the deprival of the acquired right over property. It should be mentioned that today, acquired rights over personal status and property, in addition to being predicted in the domestic laws of countries, have mechanisms at the international level including the mechanisms of Hague Conference of Private International Law in creating harmony between the conflicting laws of countries in the field of personal status and property and UN mechanisms such as International Convention for Refugees approved in 1951 and International Convention for stateless individuals ratified in 1954.
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