

The principles governing the personal status of foreigners residing in Iran from the perspective of law

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Abstract

Affair problems with foreigners in the country, according to the authors own survey shows a lack of consistent practice Court with the author's comments, as well as global developments in this area, to examine the issue from a theoretical and practical layout and helpful as well. In this article, after the introduction, the first part under the laws, to review current regulations with records historic them. In the second part, the authors studied the doctrines and opinions. In parts of third place Law and private international foundations in Islam as New Law International expressed particular Islam. Examples of performance Court and advice office legal representative of the Iranian judicial procedure, the fourth paper forms. In the debate of comparative law solutions offered by law in France, Switzerland and Germany as well viewpoint of each was investigated. In the end, the conclusion is that according to law of Islamic Republic of Iran and global developments in determining of law governing personal status, it is necessary to interpret Article 7 of Civil law profound changes be made in accordance with the current situation in Iran and the world.

Keywords: *personal status of foreigners, private international law, Islamic law, civil law.*

JEL Classification: K33, K36

1. Introduction

What laws are governing the personal status of foreigners? At first glance, the answer seems very simple because Article 7 Law Civil expressly states that:

"Foreign nationals residing in Iran in terms of personal status and capacity issues as well as the terms law legacy at about treaties, abide by the laws and regulations of their respective governments".

But the fact is that the answer is not easy. On the one hand, are caused by different interpretations, as we shall see, the doctrine, and the votes shall have dispersed from the other side considerations law the Islamic Republic of Iran, principles of law International Islamic personal, different ideas that Court in this

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case, and the possibility to divide foreigners and foreign non-Muslim foreigners the complexity of the topic is as follows. Before the investigation procedure Court and theoretical analysis of the subject, it seems necessary.

2. Review the rules

As mentioned in Article 7 BC Foreigners, about treaties, function law respective put. This material has a double meaning. On the one hand we can say that there contract to comply foreign law his national is not necessary. Contract what about, and briefly describe the details of how to apply law with the external. Obviously they can run Law Foreign to expand or restrict it. However, in the absence of contract law applicable national foreign person. On the other hand we can say that actions Law Foreign dependent on the existence of a treaty between the government and outside government. In the absence of a treaty between Iran and foreign governments, Law Iran and outside government. In the absence of a treaty between Iran and foreign governments, Law Iran will be implemented. Two articles in Law Civil, reinforces the latter view. According to Article 5 of the Law: "all inhabitants of both interior and foreign nationals will be obedient to the laws of Iran unless law" exceptions are, furthermore, in accordance with paragraph 2 of Article 961 Law Civil, foreigners cannot be the rules of personal status Law Iran, which Law Foreign nationals enjoy government will not accept it. By "enjoy" in this article is to benefit and enjoyment of other words capacity.

However, article 5 of Citizenship Law can also be made in favor of the first theory, saying that, in principle, foreigners are rules unless Iran Law one of these exceptions and exemptions, Article 7 Law the submission civil foreign Law respective national without having a need for the treaty. But the justification of paragraph 2 of Article 961 Law Civil favor of this theory is very difficult because when foreign personal status function Law its national obviously, "the rights to personal status Law Foreign nationals not accept government " will not be applicable.

In this case, paragraph 2 of article 961 of the waste and clear explanations will be repeated only a theory and practice effects would not be justified. This paragraph of Article 961 say when its status finds that pursuant to Article 5 Law all the inhabitants of civil ranging from interior or foreign nationals in the context of personal status function Law Iran, except that in accordance with Article 7 of the Treaty between the governments of Iran and abroad, and in accordance with paragraph 2 of Article 961, Iranian Foreign nationals cannot be of those rules in Law their government explicitly rejected or conflict is obvious, benefit. Foreigners living in Iran in the context of personal status, function Law Iran until the Iranian rule by Law there is unplugged. Foreigners residing in Iran are of those provisions relating to personal status laws of the respective country in unforeseen or foreseen but what Law Iran with Law they, in conflict are not obvious, benefit. The verdict in the case of foreign spouses to separate them Court Iran is issued, the wife can be invoked Law amend the relevant provisions of the Divorce (28 Persian date Aban 1371

approved by the Expediency Council), the demand wage parity may call saying things done in time, if it failed Law not his own. The history of capitulation and how to abolish it reinforced the interpretation of the above.

After Contract Turkmenchay between Iran and the Russian Tsar in February 10, 1828, for a period of approximately decreed the one hundred most foreign nationals, on the basis of bilateral agreements, either explicit condition stipulated in the Treaty and implicitly with the condition of "Most-Favored Nation treatment" in the Legal and criminal affairs in Iran, subject to national rules and immunity from prosecution enjoyed themselves. For other foreigners, the Ministry of Foreign Affairs Court Certain named Court the agency was created separate from the Department of Justice⁴. After the Constitutional Revolution, the footsteps of coding methods, regulation and legislation began in Iran. As Contract Turkmenchay capitulation in Iran is the beginning of the period, according to Contract Iran, the Soviet state (after 1917) on December 14, 1921 all these privileges were revoked.

Approval of 1 to 955 Law on 18 May 1307 the above-mentioned civil and other issues led to Prime Minister on 20 May 1307 to announce the cancellation of the official capitulation. One day later, the Ministry of Foreign Affairs to inform that all governments have a right to these concessions capitulation of May 10, 1928 have been canceled and the government signed new treaties that Iran is ready to use. Most of these countries Contract temporary for one year with Iran about the situation rights of its citizens signed. Therefore, treaties determine the situation at that time Law the personal status of foreigners in Iran. The result is that after the cancellation of capitulation, law passing foreigners on equal terms with the Iranians unless the implementation of the Treaty Law a person is permitted.

Thus, according to the records, we can say that reservations "about treaties" merely a clarification without emphasis or effect, but mainly benefiting foreign Law within the existing treaties and in particular the absence of a treaty, foreigners have the same conditions with the Iranians.

3. The doctrine

The majority of authors believe that the personal status of foreigners residing in function Law without the need to present their national treaty.

Thus, according to Article 9 of Law Civil adverb "in accordance with the Treaties" in Article 7 of the waste, and as previously mentioned, paragraph 2 of Article 961 Law Civil seems unnecessary. One of the honored author believes that if a country is subject to conditions alien character Law Country of residence and apply Law transactional foreign subject to the Treaty and does it reverse the signs. Is retained in between the author, the Professor Imam that in the explicitly stated: "If these contract is not concluded, nationals of foreign government will be subject to civil laws, except to the extent Law Foreign nationals that the government did not accept it in this case, law government will respect them like second marriage".

⁴ Emami, S. (1354). *Law Civil* (Vol. 4). Bookseller Islamiyah, p. 126.

However, he believes that civility requires that if international contract The between the Iranian government and not foreign governments, foreign government regulations towards its citizens be respected and consider this subject to reciprocal treatment. The observance of international civility and apply foreign laws for foreign nationals if the laws of that State is accepted by Iranian nationals in the case.

In any case, foreign citizens in the context of personal status authors some if treaty some without the treaty, function Law without being aware of their own national religion of Islam here has a role and that the foreign national has no effect on whether or not the solution provided by Article 7 Law of Civil Code. One of the authors has the effect of a given religion, saying that if a Muslim foreign Law let him use one of his national Law Islam does not give, for example, the Law his national right divorce prohibits or right to alimony for the wife does not know, of Court Iran as an Islamic country, the implementation of certain rules of Islam would reject his demand seems that the public order and the Constitution the of Islamic Republic of Iran is incompatible⁵. Although reject the request in accordance with Article 7 Law and paragraph 2 of Article 961 of the Civil Law is, in principle, a Court Islam cannot be Muslims than people of Quarrel remain neutral.

Public order factor that could impede the implementation of Law of foreign, conflict resolution Iran will be in accordance with the rules, whether the beneficiary is a foreign Muslim or non-Muslim foreigners. Public order in any country is influenced by the religion of the majority community.

It brings to mind other possibilities and that any difference between Muslim and non-Muslim foreigners exception applies only to public order or that this would be the case and even other developed Law of Muslim foreigners, in the context of personal status, at once?

Although Law there's no mention of the civil division of foreigners on the basis of religion, but of the set Law Iranian legislation could be inferred meaning. Law Islamic Republic of Iran in many Islamic principles emphasize that most of the provisions of Article 4 of this Law it is, pursuant to the principle of "all laws and regulations of civil, criminal, financial, economic, administrative, cultural, military, political, and other should be based on Islamic criteria. This principle applies absolutely and generally to all principles of Law Constitution and other laws and regulations governing the Guardian Council has the responsibility to determine this matter".

So from then on, the interpretation of Article 7 Law Civil in the light of Article 4 of this Law is essential. Furthermore, in Islam and artificial criteria contract for the identification of individuals and populations such as borders and the country cannot be a criterion for determining Law is competent. In religious ideology, the individual depends on God, not the state, and Muslims anywhere in the world is subject to Law Religion and theology rather Function Law Land and secular. In the introduction Law basic it is noted that "mission Law is that beliefs about its objectivity movement and created the conditions in which human and universal values of Islam".

⁵ Ja' fari Langeroodi, M. (1373). *Law property* (3 ed.). Treasure of Knowledge, p. 53.

Introduction Law the fundamental value of less than law not essential to the interpretation of the principles of this law and other laws considered. Introduction framework objectives and policies of the Islamic Republic of Iran to explain.

So actually Court in front of an ambiguity law. On the one hand, foreign conflicts and the rule of law in Iran, mainly in Law Civil (approved in 1307 and in 1313 and 1314) the essential role does religion-based diagnosis legally competent, in the context of personal status, citizenship is in relation to political, moral and Law the relationship between the individual and the state and religion is a lot of differentiation between the individual and God. On the other hand contradicts Iran's internal rules, which is specific to personal status, religion in Law is determined.

According to Law to observe the Personal Status Act of 1312, every Iranian courts Iranians not-shi'a in their religious rules that Articles 12 and 13 Law the Islamic Republic has also expressed the same meaning, while the issues of national interest in the international family rules and not religious rules.

The theory is not easy for a Muslim country since the Iranian Muslim his foreign Muslim religious rules but national rules? Especially if foreign Muslim religious conflict between national rules and that he is a Muslim country require the implementation of their religious rules. Acceptance of this argument is that since foreign interest after being a Muslim, he cannot be given an Islamic state, it is hardly possible. On the other hand the basic principles of Islam, and the country's borders were not true criteria to determine of law be competent. As is well known, "Islam knows no boundaries" and the criteria of excellence and distinction between people to piety, knowledge and jihad is not a border and territory and ethnicity. In addition to the above, the investigation of the compliance or non-compliance with Shari'ah rules adopted before the Islamic revolution is not yet clear. Guardian Council to spread their opinions about some of the laws have said. In addition to the advisory or binding nature of these comments there is no consensus vote, the council has had about rules Law Iran is not private international opinion.

Before the investigation procedure Court Management and advisory opinion of the law the deal is the right place briefly Law Private International in Islam, because the clarification of this issue will eliminate many ambiguities.

4. Private international law

As high-depth and comprehensive study of requires that at least the size of a monograph on the work which is outside the scope of this article. The rules of secular and religious coping in the world, differences between schools Rights in Islam and compare the theories of time and place, the complexity of the research, as above.

The term "Islamic private international law" can be challenged for various reasons. If the goal of Islam is to create a single global government; this is as incomprehensible. Synthetic elements, like the country, citizenship and border do not have substantive significance in Islamic ideology. Moreover, the principle of

unity Law and lack of boundaries requires that the separation between Law there is no international public and private⁶.

Therefore, in this view, residence and nationality cannot determine Law be competent. Law creates the link or no link with the Creator and clearly defines the term Law Islam cannot be a private international position as a combination of an oxymoron, i.e., Law Private international, centered on the subordination of the individual to the state, adherence to Islam, centered on the person of God is not possible.

But some Muslim scholars have responded to these criticisms. It is true that they form a global society of Muslims and Islam is ideal and ultimate goal. But until that day, that does not seem so close to Islam, borders, nations, countries and recognize the difference between citizenship⁷. Moreover, the Qur'an says that dividing the world into nations different, act of God and for the good of humanity, "O the people I created you male and female, and put you in tribes. Obviously the result of different branches and the emergence of tribes and country borders. In al-Ra'd verse 7 state that: "Head-up display per nation", a people for guidance from God.

Studying Islamic history also shows that the abolition of borders and the country has been among the goals of Islam. The Holy Prophet (PBUH) wrote in a letter that the heads of state invited them to Islam, and if they have blessed this land invitation to the border and leaving the Head of State.

The Islam, of ideological and intellectual world is divided into two parts⁸:

(a) of Islam, that all those who believe in the principles of Islam, regardless of location, language, race or other characteristic dimensions, cover.

(b) in Islam, regardless of belief, country or other aspects of specification, embraces. But in terms of political and judicial district it consists of:

- 1) Dar-al-Islam consists predominantly Muslim countries and religious orders act more or less.
- 2) Dar-al-ahd or Dar-al-solh (the house of peace): the countries that have signed peace treaties with Muslim countries and one of the three official religion as Islam, Christianity or Judaism, or Zoroastrianism that are.
- 3) Dar-al-hadne: countries that Contract Peace with the Islamic countries was secular and religious, but their Islam is not recognized.
- 4) Dar-al-hayad: non-Muslim countries in the war between Islam and Dar-al-harb (the house of war), neutral position.
- 5) Dar-al-harb (Warfare): they are non-Muslim majority countries and Muslim countries are at war with either hot war (armed) or by the Cold War.

⁶ Khalilian, K. (1362). *Law international Islamic*. Paris: Islamic Culture publications, p. 72.

⁷ Court Special Civil Tehran, 30 may 1359.

⁸ Ziaei Bigdelli, M. (1369). *Islam and Law International* (3 ed.). Paris: Publishing Company, p. 47.

Although this division to Law Public International is closer to Law Private international, but this knowledge is essential for understanding relationships between individuals at the international level.

Thus, as one of the authors mentioned, in Islam can be assumed to be two types of citizenship:

(A) citizenship that is the true meaning of Islam and citizenship;

(B) the citizenship and national secondary meaning and a sense of national citizenship.

Islam, in all its believers, Amy citizenship and puts them among the nations, regardless of residence or place of birth. The relationship between the individual and the nation on the basis of language, birth, residence, race, culture and history constitute the nationality of secondary meaning.

In other words, Law Islamic private international citizenship national citizenship Amy and each has its own role. Though religion, Islamic citizenship grants but individual characteristics "citizen" does not.

The principle of indivisibility of laws, residents of a state, which have different religions, to their own communities divides. The religious affairs and religious communities in matters of personal affairs and religious rules are not subject to the rules of the land. But in matters relating to public order and security of the society (eg. criminal law) rules relating to their homeland.

Now, according to a brief understanding of "Islamic private international law" was found, it can be the difference between these Law and most of the authors interpretation of Article 7 Law Civil and foreign nationals, even without the treaty, subject to the rules of their respective Governments, have considered laws that negate the role of religion in foreign conflicts are revealed. After this overview, analysis of the views of some Court and advice office Law of Justice can show us how respected judges in these conflicts, try to find the right way.

5. Examples of practice of the courts and advice in legal administration of justice⁹

Until the opinions Court what at first instance and on appeal and also regional level and does not publish on a regular basis is not possible sightings Court comprehensive information and its comprehensive authentication. I mentioned some of the vote is a personal search criterion, may be out of tolerance, as a handful of sample pile as otherwise stated in the title of the vote just a few examples and generalize it is not a scientific method. Advice offices Legal, because the operators of questions and answers between the administration and judicial affairs is partly recognition Law in practice helps .

Branch 101 Court Tehran in particular civil case on the lawsuit class 65/101/1652 dated 23/02/66 Ms. L.p. Iran, on the Divorce of her husband; Mr. Z.r. Pakistan has been that such a vote "on the lawsuit, Ms. L.p. The capacity of her husband, Mr. Z.r. Dyer Divorce According to the charity due to leave the petitions

⁹ Amid Zanjani, A. (1368). *Political Jurisprudence*. Islamic Culture Press, p. 142.

submitted materials and statements calling Court and his frequent visits and judgments with respect to the number 12522 101 Branch 07/13/65 Court Special Civil that Mr. Z.r. The first Persian date Mordad 1365 monthly alimony of 80,000 rials were required to be deposited and yet communicated want her husband to his vote as a petition dated 11.08.1365 and the written remarks on 22/02/66 Zvjh, no pair, maintenance of not deposit so far in terms of maintenance and document mentioned and the impossibility of carrying out the sentence to Article 1129 Law Civil judgment divorce and the separation of the two sides issued will be announced, and the pair is bound to be viewed within one month from the date of the verdict divorced his wife or the husband's consent in order to continue to provide this high life Court And the provisions of Article 1129 of the provisions of the said act ".

If only the rules Law contained in private international Law there is no justification examines the possibility of a civil judgment. The conflict rules relating to personal status and the judge must issue them, even in the absence of the parties or request citing its non-performance apply. If the vote was also said if Iranian couple documentation law. As was mentioned anything about voting but the possibility of change of nationality by marriage and wife Court must be considered¹⁰. The fundamental point is that according to Article 963 Law bilateral civil conflict resolution is a rule. If couples are not nationals of the state personal and financial relations between husbands' governments will be subject to the law. Thus, in principle at issue will need to Law Pakistan was referring, of course, perhaps the sentence Law Pakistan the same sentence Law Civil Iran, but this is just a possibility and then go and investigate, Law Saleh could be applied .

But if the principles of Law Islamic private international and Article 4 Law see the introduction to the fundamental objections not vote Court according to Law Amy's nationality or Islamic decree, nor the nationality of secondary meaning. It might be objected that though this way of reasoning with spirit Law Islamic Republic of Iran and the general principles of the ideology of Islam, but with the provisions of Article 7 Law Civil conflicts. Of course, this conflict is if the material that most authors have said, according to interpret. This means that the foreign Iran Law However, there is also its national treaty. In this case, if Article 7 according to Article 4 Law as a result, we note that our interpretation Court the above decision is reached. That is, according the principles Law Private international Islamic Muslim personal status issues in its general meaning, wherever it is, function Law Religion itself. In other words, according to Article 7 Law Civil non-Muslim foreigners, function Law Muslim religious rules of their own national and foreigners .

Branch 101 Court Special Civil Tehran in petition 549 20/04/68 in a case that demanded Mr. Abdul ... Iranian nationals living in Kuwait enforcement requests divorce Kuwaiti courts have issued about his Egyptian wife lady affection It has such a"according vote, to Mr. Abdul children reputation to ID number. Photocopy the Affidavit Divorce Issued Court Kuwait on 11/29/87 AD, his wife lady affection.... the absolute and judgment derived from the court divorce with the current Court according to the terms of the aforesaid subtraction lady affection Court

¹⁰ *Ibidem*.

Kuwait and his confession Court and criteria of 1123 Law Civil is obvious and ultimately vote Court the foreign enforce. Judgment is final" .

That is derived from this vote Court Kuwait voted and legal provisions Court Iran's ruling Court Kuwait's Law Iran has gained Islam and the Muslim parties have not entered into discussions foreign nationality based on the nationality of the wife to enforce a foreign judgment has religious stakeholders .

In the case referred to in chapter 14 36/26/71 Court Mashhad certain civil rule about not calling Mrs. Taher question of alimony and child wandering the seventh against Mr. Gholam Read, and both were Afghans .Court Tries to address the meeting on 2/19/72 Law Seat Court and regardless of foreign nationality companions Quarrel and finally resolve the matter in closed session to consider 05/19/72 couples agree that their case .

Replacing element" religion "instead of" nationality "in Iran or even non-Muslim foreigners living in its own consequences. Including those that could facilitate the fraud to the Law, since unlike the relationship between the individual citizen and the government and provide written documentation to prove it is usually. Moreover, in its acquisition element and acceptance of the will of the government cannot unilaterally created for him his nationality, religion is a spiritual relationship between the creator and the creature even to prove to people often need to provide written documentation is not the unilateral will of the individual has a fundamental role. Especially Islam, the religion is very easy to put adoption .

Therefore likely to benefit from Islamic regulations in Iran, a non-Muslim person to introduce the official religion there. At Quarrel a Lebanese Christian who has authority related to Islam Court in its judgment concerning the incentives that cause a person becomes a Muslim freely not comment. The religion must be regarded as valid marriage law theirs¹¹. This Quarrel the petition divorce his wife was motivated by the argument that Islam said he had been married by her husband. Therefore, marriage is void .

If Court he said the motives of Islam with no choice but discovered that the talk about putting someone who has expressed doubt that the Shahadah is the beginning of your legal forms, as well as to the Inquisition in which the twenty-third Law Constitution expressly prohibits it .

The second branch Court Isfahan city in a letter (06.22.1348 No. 4102) of the Office Of the Ministry of Justice asks:" Lady and resident of Germany and resident of Germany filed a lawsuit against the German wife and two children have for their what should be done?" (1348/03/08 No. 4103/7), the agency replied that "the effects of marriage and alimony Law Foreign nationals respective information is true, here Law National facultative refer to Court Iran is smooth". On how to deal with formalities and rules of procedure be respected these questions and answers can be represented, as is often supposed, in the period before Law new constitution and, being competent Law foreign respective foreign nationals residing in Iran, the topic of personal status, not the number of axioms is not otherwise need this question and answer .

¹¹ Schlar, S. M. (1369). *Law Family*. Islamic Sciences, p. 187.

It seems that this ambiguity not only not diminished, but the entry element Religion and considering it has provided a simple solution to the problem .

I branch Court Mashhad public telegrams (03/19/63 1632/7) of office Law In the case of a deceased Pakistani Yalsh that he and his wife both Shiite and only heir to the acquisition of the task. The idea was that the civil status office of the government with respect treaties .

Of the samples had mentioned should not immediately conclude that all Court Muslim foreigners are subject to Law their religious know or care to follow the principle of foreigners residing in our country Law Iran. There are signs which indicate good to know Law foreign nationality in the context of personal status, although the treaty does not exist .

Magistrate Court Law No. 585 for the installation of a volcano in 1.31.73 Mr Amin absent for minors Beloved of God, according to Pakistani nationals and 974 foreign He 973.965.7 Products Law Text-indent civil Law Pakistan to export rights of the Ministry of Justice. So Court above after being righteous belief Law Pakistan demands the text of administration Law has to. Also, Court rights 69/27/11 number two on a copy of 135/7 Law Pakistan inherited from administration law. It seems that two Court according to the above competent Law regardless of whether foreign Muslim stakeholders, have been applied without Law a pre-convention approach to foreign or international behavior and politeness are mutual. It seems to be an agreement between the governments of Iran and Pakistan in the context of personal status has not been concluded .

The department completed of Administration the Ministry of Foreign Affairs Law of Justice (No. 9521 12.17.1354) Some treaties residence, civil status, capacity and inheritance nationals of the parties to the Government put the list of the Convention are as follows :

- 1) Article 5 of the Treaty of residence and business and sailing between Iran and Greece, dated 19 January 1931 ;
- 2) Article 8 of the Convention and the Declaration of residence on judicial cooperation between Iran and Switzerland and Bails, dated 25 April 1934 ;
- 3) Article 5 of the Treaty of Commerce and the Sailing between Iran and Sweden, dated May 10, 1929 ;
- 4) Article 6 of the Convention residence between Iran and Belgium, dated May 9, 1929 ;
- 5) Article 8 of the Treaty of accommodation between Iran and Germany, dated 17 February 1929 according to the 28th of Bahma ;
- 6) Article 2 of the Treaty of residence and navigation between Iran and France, dated 3 July 1343 ;
- 7) Article 6 of the Treaty of Amity and stay between Iran and Egypt, dated November 28, 1928 in accordance with (December 7 1307);
- 8) Article 8 of the Treaty of Amity and stay between Iran and Austria, dated September 9, 1959 in accordance with (17 September 1338).

Pakistan cannot be seen in the list. So, according to this letter, the topic of personal status, there is no agreement between Iran and Pakistan.

Office rights in No. 10247/7 (17/09/1372) theories about inheritance the administration of justice in an Afghan nationals commented that according to the provisions of Articles 7 and art. 967 of Civil Law government implemented the deceased. But administration rights the sightings follow the same in their opinion is not to consider the following question and answer .

Question: "Woman and man Shia religious custom of temporary marriage has been nationals of Italy in accordance with the laws of marriage whether it is accepted or not ?"

Management consultancy theory of the Law (2113/7 07/05/136) temporary marriage (marriage or temporary marriage) pursuant to Article 1075 Law Shiite Iranian civil accordance with accepted and validated Law is the although the question text, religion Italian nationals not mentioned, but it seems that nationals are not Islam that requires consultation of management rights otherwise the validity of the religious practice by Muslim foreigners in Iran, in practice there is little doubt. In the context of the answer, no reference to the nationality of non-subjects cannot be discussed, so that if instead of two Italians, two of Iran 's response could not be other than what is said¹². In other words, terms of managing the rights in of religious practice of Islam, citizenship and perhaps even religious person without impact .

If the view of these circumstances in Law Civil and rules Law Private international spending, to be viewed in any way possible to justify legal there is no response. For if we believe that the majority of authors that out function Law Iran unless there is a treaty, it seems that treaty with the Italian government about personal status is no obstacle referred to in Article 961of Law. We will be civil whereby foreign nationals cannot Law relating to personal status, which law, foreign nationals government benefit not accept it. It remains to be seen whether Law Italy accepts temporary marriage or not? That does not seem to be so, since although the European countries a lifeline rights to the name "Concubinage "(cohabitation official) that with marriage in Law Islam's similarities, but in addition to these similarities, there are major differences in the parties' intention is that the Europeans" Concubinage "the kind of marriage unknowingly¹³ and reject marriage. The Italian, if a Muslim country can be of what could be achieved in their country, the country will benefit. This procedure firstly fraud to the Law easy to make, secondly, legal. Contrary to obtain competent principle of conflict resolution in the countries concerned and in many third countries cannot be known, and thus fragile and unstable family situations arise. Families in the country legal and illegal in another country are counted and if the situation of children in the family are precise rules that catholicism is considered temporary and unlawful certainly more important than solving the family's future materials will be a problem .

¹² Madani, J. a.-d. (1369). *Law Private International*. Knowledge Treasure Press, p. 64.

¹³ Mukarram, A. M. (1371). *Translated Law Swiss Private International Publication Law*. Faculty of Judicial Sciences, p. 92.

If the issue only in terms of rules Law just mentioned in private international Law Citizenship is not seen and Article 4 Law basic and soul of this Law also be considered. If the Italians are Muslims, the call management legal there is no objections. Because according to Law Islamic private international is the right of Muslims in today's world of Islam can at least act and this is inconsistent with Article 7 of Law not citizens, because as previously stated with regard to this matter and the fourth Law it can be interpreted won the non-Muslim foreigners living in Iran, if there is a minority, according to the authors of the treaty or even in the absence of a treaty, according to some, function Law but their national Muslim foreigners living in Iran, Islamic Republic as a country that has put religion as the official religion, your religious rules on personal status are subject¹⁴. If you are non-Muslim Italians, call the Office Rights in justifiable to say, Law foreign or foreign nationality is subject to the provisions of the Treaty Law Iran and between Italy and Iran, there is no agreement on civil status .

Thus, we can conclude briefly about the actions or lack of actions Law Foreign nationality for foreigners residing in Iran, if there is a treaty or non-Muslim as well as whether or not the beneficiary, there is no consensus among the courts and the practice of the past and what esteemed authors suggest that there is . In oral opinions of the author in years 72 and 73 of the heads of branches 101, 102, 104 and 118 Court Special Civil Tehran and branch 12 Court Mashhad General has stated that the majority of Muslims abroad Law this is because we are implementing Sharia law function. In contrast, the Deputy Head of Branch 118 Court Special Civil Tehran has stated that Article 13 Law about Iranians and outsiders should be based not only on the Law Civil presented. Except for ideological reasons in implementation Law Islam for Muslim foreigners, this is due to the practical difficulties in implementing law out as well. Head of Branch 12 Court Mashhad public in 72 years, the city in which large numbers of Afghans and foreign nationals all claims relating to personal status in Mashhad were referred to this branch of my answer to the question what law Foreign nationals applying to you? Says that the Court a large number of refugees and Afghan escapees and Iraqis have fled their country and that we Law Sharia run. Moreover, these nationals Law want. Physical obstacles in proving and implementation Law external causes such as war and ties Law Seat Court Surrogate Law is foreign. In the case of refugees, too, as the Office Law the Justice Department on 07.19.1371 6466/7 theory about the division of inheritance is a native comment because of the Soviet Union in 1355 Law implementation of the Convention on Refugees and the Protocol have ratified it and in accordance with Article 12 of Law the personal status of refugees from the country where he resides¹⁵ after Court should appoint heirs of the deceased and the amount of inheritance Civil Law Islamic Republic of Iran to run .

One of the applied problems Law Religion to Muslims abroad in Iran, about which the individual depends on the country of Iran Contract Bob is mutual personal status. According to the treaties, nationals of States parties contract subject to

¹⁴ Nasiri, M. (1372). *Law Private International*. Aware Publications, p. 27.

¹⁵ Audit, B. (1991). *Droit International Prive*. Economica, Paris, p. 660.

mutually Iranians in Iran Law their own nation without a national religion be considered. However, if the Muslim nationals of States parties to the Contract ,according to Law the National Law Islam, Law do not apply national rules we impose his religion, in fact unilaterally without the knowledge and consent of the parties to a treaty clause religion Contract added. If we want to have a duality will behave exactly treaties. i.e., Muslim on external non-sides Contract (Law Islam and Muslims to get out) the Contract (Law National should be implemented and this duality of principles Law Private international not compatible). For example, according to paragraph 2 Contract Maritime and stay between Iran and France (approved June 24, 1964), a French civil status, whether Muslim or non-Muslim in Iran, is always subject to Law France, which is evident Law in contrast to secular France law French Muslim religion.

While it is possible for a British Muslims in Iran, Law His religious implemented between Iran and Britain because the treaty is not the case. Court also all the action, regardless of how to deal with Muslim foreigners, to agree necessary action to treaties. The only possible solution, the use of article 975 of Law Civil, if necessary. Namely, that a treaty with Iran if practice Law Muslim foreign national a national of that State is contrary to good morals and public order in Iran, it Law Foreign not applicable because under Article 975 Law Civil foreign laws or court cannot Contract private contrary to good morals, or by hurting the community or the other reason is contrary to public policy to enforce the time limit although law enforcement is the fact.

6. Comparative law

Two elders Law French private international profound impact Savin ideas "Savigny "in Law Private international remaining European countries¹⁶.

Savin thinking has no direct effect in the United States. He said that the Anglo-Saxon countries such as Store civilizations of the West should carry out any works Law provide her with the other. He does not think the benefits and responsibilities of governments, but the center of gravity relations rights and the base for determination of these relationships thinks. The relationship between nature rights and Law there is a definite connection Saleh. According to Savin, rights of residence should function, because experience law also indicates that this place is the base of natural factors.

Citizenship is a political, rights and intellectual property between the individual and the state. But when a man from his country to another country and there is the matter of their own affairs and appoint location longer stay as this is usually mentioned triple bonds between the individual and the government weaker and his relationship with his residence becomes even stronger. In determining the Law governing the personal status of foreigners cannot be ignored facts. The accommodation bigger role than in the past on issues of personal status of foreigners plays. Some countries will also factor in determining Law Saleh on personal status

¹⁶ Batiffol, H., & Lagarde, P. (1993). *Traite de Droit international Prive*, Tom 1. LGDJ, Paris, p. 359.

are included. Surely we can say that now apply Law stay connected for the personal status of foreigners retardation is not only expected, but perhaps a sign of progress in Law is. According to scientific materials and practical, even countries that classically affair to function Law national and some of the factors residence, as the element used more than ever.

In Switzerland, the last rule Law Personal Status is a national operator in Law December 18, 1987 Private International Act in Article 48 states that : the law governing the Law and the duties of marriage ,Law if the couple's residence and resident couples no single country, Law ruling and the duties of marriage Law which is the nearest residence dependence (relationship) with Quarrel it is¹⁷.

France Law about divorce and subtracting physical before Law 11 July 1975 jurisprudence has chosen a system of communication elements that alternatively be operated. This means that for couples who both had a function, law their national nationality and for that they were different but common residence Law accommodation and for those who both non-shared citizenship and residence Law Seat Court "Lex Fori" was applied Law mentioned before in the form of Article 310 Law so to break the French civil accordingly .

According to paragraph I of this Law when spouses are French Law France about divorce and subtracting the governing body, which echoed Article 3 of the Law according to which the laws relating to the Status and Qualification (France) governing the French, although they are abroad. According to the second paragraph of this article, if both spouses are resident on French soil Law French ruling divorce and physical differentiation. In this case, the element has no nationality¹⁸. Foreign couples residing in France, which both have a different nationality if they demand in a timely manner divorce French residents are subject to Law in French.

The most important element of the residence. Whereas previously a function of the couple who had Law Saleh had their national .

Theory "Proximate" justify acts Law French for foreigners in the country about divorce although the couple have a common nationality. Given the importance of this theory on many issues Law International especially like Law Contract their affair is commemorated explanations about it. According to Laggard principle of "Proximate" Western European countries to challenge US response that the principle of Law better has renewed¹⁹.

This principle implies a relationship of dependency rights of the Organization Rights of the country, which has the closest relationship with and dependence on a Quarrel to Court State that the closest relationship or at least a close bond, as well as the close links adjourn the effectiveness of a judicial decision that is the decision-maker. In this way, the principle of conflict of laws, jurisdiction and enforcement of judgments and decisions, acts, the principle Quarrel as possible to

¹⁷ *Ibidem*.

¹⁸ Cass. (1993). (E. KERCKHOVE, Ed.) *CIV*, 1993.

¹⁹ Gannage, P. (1992, Sep). *La penetration de l'autonomie de la volonte dans le droit international prive de la famille*, Rev. crit. dr. int. priv, p. 425 ets.

Court related to that is closer to it all. Relation law the President must obey the Law a country with which it has the closest links.

Savin thinking is based on the idea he has exceeded his ideas. Abstract concept relations center legal always law the resulting situation is that most of the will not lead to close .

The principle of "proximate" to consider the following advantages: 1. one of the solutions; 2. respecting the legitimate expectations of the parties; 3. governments in managing a state of balance between the expected benefits of rights .

Law it cannot be dissatisfied with the lack of jurisdiction, because the relationship rights of closer ties with Law other countries. This solution is more equitable because instead of a single and objective element, a connection element is associated with the position operation. Now the main field of application of this principle in Law Commitments, especially Contract Host. Search Law the ruling in this case to determine the country that is often directly Contract in close relationship with it. Due to the fact that in some countries, such as France's financial ties to family and personal status will not be part of the class Contract is studied, as family financial regimes "Les Regimes matrimoniaux" application of the principle of there, indirectly affects the civil status. I think separating the marriage of the non-financial effects of it, though clearly in Law Iran has not been recent changes in the family's financial problems as in Law amend the relevant provisions of the Divorce Adopted by the Islamic Consultative Assembly Persian date Esfand 1370 Note 6, stated that according to Article 1118 and 1119 Law it seems that in civil Law Iran can also be the financial effects of the marriage and his separation from his distinct personal status, or at least a greater role than what is already there is to be made for the sovereignty of will, because it makes with the realities of the fiscal matters family's society more consistent. However, pursuant to Article 1106 Law Civil permanent marriage the wife to the husband, but as one of the originators Law the family said "the sticking point seems to be that a woman's right to alimony coming days to handle the scrapping pair"²⁰ and possibly its commitment to use. In this case, to determine Law governing financial relationships between an Iranian couple, in addition to Law if the national agreements and transactions between the parties are living abroad Law foreign government would be considering .

Now contract in Britain and France, except in the case agreed that there is a function Law a country that is closest to it. In Switzerland, the principle of "Proximate "the results have been more. This principle and the principle of party autonomy, sometimes complementing each other and sometimes there is a mismatch between them, are complementary because the search objective will mean that close relations, for example in the case of couples with the financial interests of a particular country, be sought. Failure to comply in the sense that when the will was announced this intention, Law ruling determined, regardless of their close links with another country can have. In the case of Proximate and the rule of government, person-to-government relationship requires that the circumstances of one's personality and the family we are all share the same nationality, Law National run. When running Law

²⁰ Massip, J. (1993). *Le conseiller doyen honoraire a la Cour de cassation*. Dalloz, Paris, p. 343.

element of citizenship is not possible, due to lack of different nationality or citizenship of a family, search for a successor starting element that is often the beneficiary in accordance with the government that is closest to it. It Court Rights of" Neuchatel "Swiss, in a vote of 5 April 1982, Quarrel identification of the natural parentage of revocation was filed by the child and he was an Italian who was born in Switzerland but when marshaling Quarrel with his Italian mother had lived in Italy, the issue had strong ties with Switzerland. Read because (the father) was an Italian and a Swiss resident registration child's name on the list was registered in Switzerland and matters relating to the mandate already had been done in Switzerland. True father was the son of an Italian living in Italy, although the lack of a common residence in accordance with Article 8 Law 25 June 1976 Switzerland, Law of Italy as nationality, shared by all parties Quarrel but it must be righteous Court due to the strong ties with Switzerland Law Saleh was diagnosed .

In previous discussions about what actions Law Religious foreign Muslims residing in Iran by some Court what we're nothing more than acts Law accommodation in accordance with Article 7 Law Civil society, especially in countries that Iran does not have a personal status of a treaty with them. Although the theoretical principles stated above in Court entirely with the principles stated in the European Law, International Islam is different, but this fact should not be ignored that most foreigners residing fellowship immigrants, refugees, deportees from Muslim countries that is now stronger and stronger material and spiritual ties with Iran over the country of their origin and not under the principle of "Proximite,"but also as a tangible or intangible, which definitely does not objectively affect the vote. At Law France in addition to the principle of "Proximite "a brief review of other reasons that led from 1975 onwards, divorce foreigners residing in France Function Law these countries, not Law National foreign nationals is useful. Two contemporary authors said: "France is a nation of immigrants be better settlers who are living on French soil function law as time passed the that is very alien to him, not the obedience to the past Law France has the advantage of being absorbed deeper that in today's society"²¹ and the other French in terms of an author ": This implementation Law France Court makes it easy. Because for Court due to the increasing problem of immigration and different nations, will continue to adhere Article Law National²².

When a country decides to impose a purely national interests conflict rules, conflict resolution will be not only coordination between systems, but instead of solving conflict of laws, the conflict will develop solutions that result and the instability of the situation hit her Rights of private persons in the international scene. According to Article 963 Law Iranian civil, if not one nationality couples. Financial and non-financial relationships of the family Law national couples and the holders of dual nationality, if one is of Iranian nationality, Court it assumes his Iranian nationality and Law Iran executes. At Law France about dual citizenship, if one of them is French Court the same solution applies .

²¹ *Lexique de termes juridiques*. (1990). Dalloz, Paris, p. 117.

²² Loussouarn, Y., & Bourel, P. (2007). *Droit international prive*, Dalloz, Paris, p. 325.

This will solve the problem in appearance but practical problems remain in the international family. Because this assumption is not always in accordance reality, in fact, not in Law Iran and not in Law France practical problems arising from multi-national conflict rules about personal status is unresolved. For the implementation of Law Seat Court in every country, these people in the country use its own advantages in another country is unacceptable. For example, a person both French and Algerian nationality married to a French woman on the grounds that the protest was illegal because he had married his second wife was in Algeria, the French Supreme Court, although the individual Algerian authorities, Algeria is but because of his French nationality due to the Law France and this includes contracts signed in Algeria, too²³. Thus, according Law of France monogamous person and the Law of Algeria has two wives is.

In other words, according to the French Law France had no right to act in the Algerian second marriage which, according to Law its national (France) is prohibited, although by Law no other national forms. The wife is much more difficult situation because Law French person knows her husband Law Algeria marriage illegal and another person knows his wife. Therefore, the double, one of them according to nationality Court it is, instead, the individual always citizenship multiple nationality Court Suppose, if both the active and effective citizenship rules apply, although the effective nationality, citizenship Court is not addressed, or that both the rule of the family which countries are closest and strongest bond, apply, then these problems will be less .

One of the reasons given in France Law accommodation and abandonment law, foreign respective national Article 5 of Protocol No. 7 (22 November 1984) European Convention on the Protection of Law Human and Fundamental Freedoms, which provides that the principle of equality of spouses in family legal relations²⁴. Therefore, the Convention is a country that can resolve the conflict between husband and wife conflict rules, each with a state function of they function Law even if this is the result of its national and Contract this would be contrary to international conventions and treaties in fact, conflict arises. This is a situation where France suffered from it. Since August 1981, Convention between France and Morocco concerning personal status and judicial cooperation, respect for personal affairs in France provides that residents of the West. On the other hand the European Convention Law Human insistence on the equality of spouses in family legal relations. Convention jurisprudence of the country Law Human prefers²⁵, while the government should fulfill its international obligations or to modify its previous Conventions, which is applicable to the next.

However, the superiority of one Contract other international treaties could be criticized but if non-compliance is part of a Contract International public order is based on the criticism will be difficult. Since the entry into force of Knowing Law National Foreign nationals does not mean that Law his national, even in the face of public opposition to the headquarters Court must be implemented.

²³ Matine Daftari, A. (1930). *La Suppression des Capitulations en Perse*, PUF, Paris, p. 91.

²⁴ Mayer, Pierre. (1991). *Droit International Prive*. Montchrestien, p. 577.

²⁵ Moazzami, A. (1937). *Essai sur La condition des etrangers en Iran*. These, p. 62.

According to German doctrine, the mere existence of relatively strong issue with Germany inlands beziehung the implementation of Law Germany, however , Law Germany is not clear breach of international public order. Due to the fact that public order is a relative concept and does dogmatism if the situation Law The created considerable ties with headquarters Court be competent Law according to foreign public order is rejected. In other words, according to this theory, apply Law while foreign matter, which has close links to the country Quarrel it is "Proximité" contrary to public order. "Franzkahn" at the end of the nineteenth century, has mentioned the disqualifications Law foreign interest Law Seat Court only if it is possible to make a connection relationship between fights the judge posed and headquarters Court is. Connect with the land can fix soft Law is foreign. Connection with the territory of the exception that members of the public order .

One Court Germany on September 16, 1980 in fights between couples related to alimony Iran, who lived apart from each other, to rule Law Iran stay fights which the wife is living apart from his wife, which shall be fixed subject to the resumption of cohabitation makes the wife at risk (while the lack of such risk) many links between fights the proposed and expressed Germany. In particular, the residence of the parties and to apply Law Iran is likely leads to cost calling (wife) patients and no source of income, the Social Assistance Fund Germany imposed²⁶.

In the vote Court German axis bond issue argue with the soil of this country and the possibility of damage to the wife of actions Law is reinforcing its national character. If no arguments to public order, Court should Law Iran executed it. Because according to Article 8 Contract stay between Iran and Germany dated 17 February 1929 on issues related to Law each person and family and inheritance nationals of States parties to the Contract on the other hand, the soil will be subject to provisions of their national laws .

Due to the special features of personal status, which requires stability and durability, and is related to society, traditionally these communication function law National or domicile and the element "will" not only in determining Law is not the dominant role, involvement as the mirror opposite of the possibility of Fraud than Law considered. Today, by the Law Contract what can be the role of this element in the personal affairs of the country²⁷. For example, according Law 20 March 1981 Netherlands, the divorce Foreign couples in the first place Law Saleh, as both have a function, Law National them. This is due to the fact that each of them with the Netherlands has an effective social communication. If there is such a relationship, couples can law Select national or that Law Netherlands to adopt. At Law Private international family affairs in western countries, the role granted to the parties to a choice between Law National parties Law home or Law their dwelling places are limited. Unlike Law Contract that the parties have a wide range of choice, in issues Law Family party cannot choose but law that deep ties to the family. It is composed of the country of origin, often a citizen or resident of the country of residence of the beneficiary.

²⁶ Lagarde. (1986). *Le Principe de proximité dans le droit international privé contemporain*. Cours général de droit international privé, Boston, p. 11 ets.

²⁷ Peetiti, Deaux & Imbert. (1995). *La Covention Europeene des Droits de L'homme*. Economica, Paris, p. 1111 ets.

7. Conclusion

Foreigners residing in Iran in the context of personal status function Law unless the treaty between the Iranian government and the Iranian government foreign nationals in this. According to Article 4 Law Islamic Republic of Iran and principles Law Private international Islamic Muslim foreigners living in, even with the existence of a treaty, function Law their religious (in the case of personal status are).

Looks at recent developments in countries that have chosen the element of citizenship as a determining factor indicates that due to objective elements of communication such as accommodation, residence, connection with the land and the role of citizenship as an element that is always it is not true, or at least to the extent that it seems not objective, is reduced .

Due to the above developments and Law Islamic Republic of Iran, to revise the interpretation of the rules of conflict resolution Law Iran's private international and possibly some amendments after a thorough study and consultation is necessary.

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