

Rights of foreign citizens in the family-marriage relations

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ABSTRACT: The article is devoted to the rights of the foreigners in the family-marriage relations in Iran Islam Republic. The rights of the foreigners are analyzed in mutual relations with international law. It is determined current emptiness of Iranian legislation with its superior opportunity. The suggestions are given according to it. It is based on the international obligations of Iranian state considering the complex and contradictions characters of the family relations.

Key words: International law, family-marriage relations, international obligations, contradictions characters

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In international relations family (marriage, succession), civil law, labor law and other legal relations with foreign citizens are regulated by norms that form legal situation of foreign citizens in international private law sphere. Private law, at the same time, is the law that regulates relations between private persons. (Neshateva, 2004).

Formed in accordance with and under influence of civil laws of France, collection of civil laws of the Islamic Republic of Iran includes general provisions of private law as below:

Related with persons (name, address, personal belongings, authorities, migration and etc.);

Family issues (marriage, founding a family, divorce, kinship, alimony, adoption, patronage and etc.);

Wealth, property (forms of property, deals and contracts, succession, presents and etc.).

Legal issues related to personal status of foreign citizens are of matters of importance in legislation. As in most of countries, Iranian legislation prefers the principle of area in issues of real estate (*lex rei sitae*), but bases on the principle of private law in consideration to real estate (*lex personalis*). Civil Code of Iran, Article 961, paragraph 2 takes into consideration of private status of foreign citizens and recognizes rights of the state they are citizens of (Katoozian, 2007).

Viewing private status of citizens in the sphere of private law, first of all, there is need to research family-marriage issues. As known, founding a family is private right of every person and depends on his/her free will. However, reality is different. Since ancient times, taking their religious, social and political views into consideration, states have formed the right of marriage as a social process and defined several restrictions in this sphere. In most of countries in the world this issue is also regulated by religious views in the context of written or unwritten laws. It is especially remarkable in monotheistic religions. Judaism is one of the religions that strictly forbid their followers to marry foreigners. In some parts of Torah marriage of Jews with foreigners is considered as a great sin and is seriously prohibited. The first place where we can find in Torah such a prohibition is as below:

“Swear by the Lord, the God of Heaven and earth, that thou shalt not take a wife unto my son from among the daughters of the Canaanites among whom I dwell, but thou shalt go unto my country, and to my kindred, and take a wife unto my son Isaac”.

Christianity also prohibits marriages with foreigners. However, as it is not a racial religion as Judaism, ethnic origin doesn't have importance here. Comparing marriage relations of Christianity with those of Islam, Adam Metz writes: “The main difference between Christianity and Islam in Middle Ages was that many non-Muslims lived among Muslims. Islamic laws didn't allow changing religion, however embracing Islam was exceptionally allowed. Marriage between Muslims and non-Muslims was forbidden, too. The same is valid in Christianity – a Christian woman cannot found a family with non-Christian, because a child born in that family will be considered as out of Christianity. According to laws of the Church, Christian men also cannot marry to non-Christian women. This can be exceptionally accepted, only if the woman embraces Christianity” (Metz, 2007).

Zoroastrianism also forbade marriage with foreigners. These prohibitions mainly served maintenance of continuation of religious rituals and protection of family. Quotation from Pahlavi scripts: "Reason of drought and poorness is that men from foreign cities come here and found a family and then take women with them. Parents of brides cry, saying their daughters were taken as concubines".

According to Islam, all human beings are children of one father and one mother. So, regardless of nationality, all of those who have adopted Islam are as brothers (The Koran, 2001). Islam was against nationalism from very first times. Prophet of Islam didn't have different attitude towards Abu Zar, Bilal or Salman. In matters of marriage with foreigners national identity or ethnic origin played no role. At present, it is precisely reflected in international law.

International law approves importance of family, its role in society and necessity of providing essential conditions for continuation of this institution. According to the 16-th Article of the Universal Declaration of Human Rights, regardless of all racial, national and religious differences, every man or woman of full age can marry each-other.

During all the time of marriage and in case of divorce man and woman has the same equal rights in all kind of issues related to marriage (Ebraheemi, 1984). Marriage is realized with the full consent of man and woman.

Article 23, paragraphs 2 and 3 of The International Covenant on Civil and Political Rights: "2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses.

Other international agreements as the International Covenant on economic, social and cultural rights (Article 10) approve that marriage can be entered into only based on full consent of intending spouses.

As the Iranian legislation gives special importance to family, based on supreme laws of Islamic religion, it has defined several restrictions on the issue of marriage with foreigners, which are reflected in Articles 1060 and 1061 of Civil Code. Before interpreting the topic, it should be mentioned that these Articles include only marriages between Muslim women and non-Muslim men, Iranian women and non-Iranian men, state officials and citizens of other countries (3, p.144). There is no restriction for non-official Iranian men to marry non-Iranian women. These articles exclude only cases allowed by Islamic religion and Shiah jurisprudence.

The abovementioned articles are based almost only on political principles, because, according to Iranian and even some European, Latin American and etc. laws, wife subordinates to husband. So, withdrawal of woman from citizenship means decrease in patronage of the state on its citizens (Ebraheemi, 1984).

Article 1060 of the Law on Personal Status and Marriage says: "When laws allow, Marriage of an Iranian woman with a foreigner depends on special permission of the State." As mentioned above, taking into consideration the political situation, the State takes warranty from the citizen woman that her marriage with a foreigner will, in no condition, have function of influence. However, it is wrong from many aspects. First of all, human rights allow any woman to found a family with any man. From the other hand, the issue of subordination is a matter of will. Any person can, on the basis of international laws, adopt citizenship of any state that he/she wants. So, no state has the right can keep people forcedly in its citizenship. Naturally, security problems, as well as social problems are exceptional factors (Katoozian, 1996). Unacceptability of restriction of the right of citizenship is reflected in international law, as well as the Universal Declaration of Human Rights (Article 15). So, non-influence principle of marriage of an Iranian woman with a foreigner contradicts with human rights. Ratified on Khordad 23, 1310, the Law on Family and Marriage defines (Article 17): "Even in case of no legal violations, marriage of an Iranian woman with a foreigner depends on special permission. The state shall appoint a representative for such permission in every region. If a foreigner marries an Iranian woman without the permission mentioned above, he will be arrested for 1 to 3 years" (Ebraheemi, 1984).

Close to the same date, the Committee of Ministers renewed the permission of Iranian women for marriage with foreigners (Regulation of 07/06/1345). Article 1 of the Regulation charges the Ministry of Internal Affairs to give permission to Iranian women, who intend to enter into marriage with foreigners, in accordance with provisions of the Regulation. Article 2 requires the man to present passport issued by an official body of the state they belong to and an affirmation document on adoption of Islam. Together with these documents, in case that the woman requires, documents on previous imprisonment, financial situation, expenses and obligation of paying alimony, which should be properly officially confirmed by local authorities or consular bureau of the state the man belongs to (Ebraheemi, 1984).

Article 6 of the same Law defines the process of verification as below: "Appropriate bodies or the Iranian Consular Bureau verifies passports and other documentation, after which defines, whether the intended marriage is desirable and corresponds to the code of moral values. In case of confirmation of the intended marriage, the Bureau sends photos of the intended spouses, the mentioned documents and the permission for marriage to the Ministry of Internal Affairs".

Marriage of some officials with foreign citizens is also precisely restricted in Iran by law. According to Article 1061, some officials, official businessmen and students with state education are obliged to receive a special permission for marriage with foreign women.

During adoption of this law in the system of legislation main attention was paid to purely political principles. It is important not only in Iran, but also for other countries at present. Similar problem can be observed in relations between Great Britain and France in Middle Ages – France took legal measures for restricting French women to enter into marriage with British military officers. For preventing the British to attain real estate in France, the institute of “public order” of the French family law was largely implemented.

Legislation includes prohibitions for the purpose of misuse, foreign espionage, state security and protection of state integrity. After some reforms for the same purpose and in the same direction, the Law prohibited on 10.25.1345 personnel of the Ministry of Foreign Affairs to marry foreign citizens. This prohibition decisively confirms the prohibition defined in Article 1061.

The special article says that, beginning from the date defined by law, personnel of the Ministry of Foreign Affairs cannot enter into marriage with foreigners or persons, who have adopted Iranian citizenship. In case of such a marriage, regardless of position, no official person can continue his/her work in the Ministry of Foreign Affairs. Additional notes of the Law also define such prohibitions. According to Note 1, after the Law comes into force, no one, whose spouse is or was a foreigner, can be recruited for work in the Ministry of Foreign Affairs. Note 2 defines, that MFA personnel, whose spouses were citizens of a different country than Iran, cannot be send on an official journey to the country their spouses previously belonged to.

Rights of succession of foreign citizens in Iran are also in the centre of attention as a part of issues related to their personal status. Relating issues of succession of foreigners deceased in Iran, consultant opinion of the Minister of Justice bases on the principles of Civil Code. Article 967 of Civil Code defines: “Successor, amount of legacy (for real estate and other properties of foreign citizens in Iran) and right of succession defined by will of the deceased person for such legacy are defined in accordance with laws of the state the deceased person belonged to”. Conclusion from this Law is that regarding succession issues of a foreigner, laws of the country of the deceased person prevail. Iranian Laws in this case have only formal and registration character (Ebraheemi, 1984).

In this case, integrity of the inherited property is the main principle. This, however, contradicts to the Iranian Law, which says that issues of real estate are regulated by laws of the region where the real estate is situated.

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