ISSUES OF LEGAL REGULATION OF MARITAL RELATIONS COMPLICATED BY A FOREIGN ELEMENT

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ABSTRACT

This article discusses the family relations in international private law, legal regulation of family relations complicated by a foreign element, conflict issues in the field of family law, as well as the legal grounds of marriage conclusion and annulment in international private law, marriage concluded outside the territory of the Republic of Uzbekistan cases of confession, "lame" marriage issues. After the researching legislation of foreign countries, normative legal documents, practical judicial cases, are given proposals for further development of national legislation.

Key words: *marital relations complicated by a foreign element, marital relations marriage, annulment of marriage, "lame" marriage.*

ВОПРОСЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ БРАЧНЫХ ОТНОШЕНИЙ, ОСЛОЖНЕННЫХ ИНОСТРАННЫМ ЭЛЕМЕНТОМ

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АННОТАЦИЯ

В данной статье рассматриваются семейные отношения в международном частном праве, правовое регулирование семейных отношений, осложненных иностранным элементом, коллизионные вопросы в сфере

семейного права, а также правовые основания заключения и расторжения брака в международном частном праве, заключенный брак. за пределами территории Республики Узбекистан случаи исповеди, вопросы «хромого» брака. После изучения законодательства зарубежных стран, нормативных правовых документов, практических судебных дел даются предложения по дальнейшему развитию национального законодательства.

Ключевые слова: *брачные отношения осложненные иностранным элементом, брачные отношения брака, расторжение брака, «хромой» брак.*

外国の要素が複雑に絡む夫婦関係の法的規制の問題

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要旨：本論文は、国際私法における家族関係、外国の要素によって複雑化した家族関係の法的規制、家族法の分野における法の抵触の問題、さらに国際私法における婚姻の成立と解消の法的根拠、ウズベキスタン共和国領域外での告白の事例、「跛行」婚の問題を扱う。諸外国の法律、規範的な法律文書、実践的な裁判例を研究した上で、国内法のさらなる発展のための提案を行う。

キーワード：外的要素によって複雑化した夫婦関係、結婚の夫婦関係、結婚の解消、「いい加減な」結婚。

INTRODUCTION

When we talk about the legal basis of marriage in international private law and its annulment, we can know that the conflict issues that regulate these relations are at the center of our topic. Foreign citizens and stateless persons of Uzbekistan they have the same rights and obligations as citizens of the Republic. Racial, religious restrictions or inequality between men and women or other restrictions established by the personal law of foreign citizens or stateless persons do not have any legal significance in the Republic of Uzbekistan. This is in Article 234 of the Family Code

Oriental Renaissance: Innovative, educational, natural and social sciences
SJIF 2023 = 6.131 / ASI Factor = 1.7
(E)ISSN:2181-1784
www.oriens.uz
3(11), November, 2023

of the Republic of Uzbekistan the situation is reflected as follows, i.e. "Foreign citizens and stateless persons permanently residing in the Republic of Uzbekistan enjoy equal rights and have equal obligations with Uzbek citizens in family relations in its territory."[1] Marital relations are among the relations of private international law that are regulated by means of the conflict-law method. In the Republic of Uzbekistan, marriages involving foreign citizens or stateless persons are regulated on the basis of the material and legal norms of the Family Law of the Republic of Uzbekistan as a result of the impact of the territorial conflict norm. In this type of regulation, the rules established in the personal law of a foreign citizen or a stateless person are not taken into account. Both material and legal conditions and formal conditions of marriage are implemented based on the rules established in the Republic of Uzbekistan. Although not directly, the legislator indicates that the law of the place of marriage must be applied, not the personal law.

DISCUSSION AND RESULTS

Personal law of an individual (lex personalis) The personal law of an individual, depending on the state's affiliation with a particular legal system, is understood in two versions:

1. **Law of citizenship** (*lex patriae*) - the legal status of a person is determined by the legislation of the state whose citizenship this person has. This conflict of law principle has an extraterritorial nature - the state seeks to subordinate all its citizens to its jurisdiction, regardless of their location. The understanding of personal law as the law of citizenship is characteristic of most continental law countries (France, Belgium, Spain, Germany, Japan). "The legal capacity of an individual is determined by the law of the state of which he is a citizen" (Article 5 of the Civil Code of Greece).
2. **Law of domicile** *(lex domicilii - law of place of residence*) - the legal status of a person is determined by the legislation of the state in whose territory the person resides. This conflict of law principle has a territorial nature - the state subjects to its jurisdiction all persons located on its territory, regardless of their citizenship. The understanding of personal law as the law of domicile is characteristic mainly of common law states (USA, UK, Iceland). "The status and capacity of an individual are governed by the law of his domicile" (Article 3083 of the Civil Code of Quebec). This conflict of laws link is also enshrined in the law of many continental countries

(Switzerland, Norway, Denmark). "The status and legal capacity of individuals are determined by the law of their place of residence" (Article 13 of the Civil Code of Mexico)[2].

In the countries belonging to the Romano-German legal system, the personal law of an individual is considered the law of citizenship (lex patriae), while in the countries belonging to the Anglo-Saxon legal system it is the law of the place of residence (lex domicilii). Even in countries with the same legal system, these criteria are formulated differently. In countries belonging to Anglo-American law (Australia, Great Britain, New Zealand, Peru, Venezuela, Brazil, etc.), the personal law of a person is the law of the place of residence. In addition to common features, there are certain differences between the English and American systems. English domicile does not refer to a connection with a place, but rather a connection of a specific right with a sphere of action. The American doctrine of private international law arose before the English doctrine and arose from the practice of the US courts to resolve conflicts between the laws of different states. Furthemore, the participants in this problematic legal relationship are considered to be persons who, in many cases, have not yet received American citizenship, but have lost any legal ties to their country of citizenship. Subjecting the legal status of all these persons to the local law, i.e. the laws of the state where the immigrant resides, US courts have long tried to promote the "law of the country of jurisdiction" (lex fori) movement. Arising due to conflicting norms of a territorial nature inconveniences are mainly related to material and legal conditions. For example, in Japan, the marriage age for women was set at 16. 0 The Family Code of the Republic of Uzbekistan states that the marriage age for women is 18 years. Therefore, a citizen of the Republic of Uzbekistan who has reached the age of 16 and is getting married in Japan has the right to get married. But this marriage is not recognized according to the legislation of the Republic of Uzbekistan (except in cases of emancipation). However, I would like to mention that starting from April 1, 2022, the age of marriage for women in Japan has been set at 18 years.[3]

At this point, I thought it necessary to touch on the issue of "lame" marriage. I would like to explain this on the basis of a case.

For example, if a citizen of Russia and a citizen of Bulgaria are getting married, the conditions specified in Articles 12-15 of the Family Code of the Russian Federation apply to the Russian citizen, and the conditions and obstacles specified in the Family Code of Bulgaria apply to the Bulgarian citizen, if this obstacle if the circumstances do not conflict with the Family Law of the Russian Federation. As noted in the brief comments to the Family Code of the Russian Federation, "...non-application of foreign law, non-recognition or non-implementation of relevant documents of Russian institutions in foreign jurisdictions where civil law is

important, "lame" marriage, i.e. one was leading to a marriage that was recognized in one country and not recognized in another country".[4]

If we briefly touch on the issue of consular marriages, the Republic of Uzbekistan guarantees legal protection and patronage of its citizens both inside and outside its territory.[5] Such tasks are performed by the consular institutions of Uzbekistan in foreign countries.[6] Consular institution (from Latin Consulo, which means "discuss", "take action", "help") - a consular institution that is part of the system of foreign relations bodies of the country, is located is an organization that implements the rights and interests of the country, its citizens and legal entities represented by it in the territory of the country determined by agreement and in the country where the institution is located.[7] The main activity of the embassies is aimed at ensuring interstate diplomatic relations of a representative, political nature, and in the case of interstate relations, consular institutions are directly directed at ensuring the protection of the rights and interests of the citizens of one country in the territory of another country. In particular, consular institutions carry out jurisdictional actions without problems (notarial actions and registration of civil status documents) and protect the interests of their citizens in cases of death, minors and citizens with full legal capacity.[8]

Consular institutions of the Republic of Uzbekistan in their activities follow the (1963) Vienna Convention on Consular Relations, bilateral agreements and contracts, the (1996) Consular Charter of the Republic of Uzbekistan and the regulations and guidelines of the Ministry of Foreign Affairs of the Republic of Uzbekistan.

Foreign marriages of citizens of the Republic of Uzbekistan can be concluded in the competent bodies of this country, in addition to consular institutions or embassies. Citizens of the Republic of Uzbekistan can register their marriage in a foreign country in addition to the consular institution of the Republic of Uzbekistan located in that country, as well as in the competent authorities of this country. The form and material conditions of such a marriage are recognized as valid based on the legislation of the place of marriage. Marriages with the participation of citizens of the Republic of Uzbekistan registered in a foreign country in accordance with the family legislation of this country in another form established in this country are recognized in the Republic of Uzbekistan. Citizens of the Republic of Uzbekistan who want to register their marriage at the consular institution of the Republic of Uzbekistan located in a foreign country, if they have not reached the age of marriage established by the family legislation of the Republic of Uzbekistan, have reached the age of marriage according to the legislation of the country where the consular institution is located. are considered, and if this country (Argentina, Brazil) refers the

conditions of marriage to the law of the place of marriage, the parties have the right to register their marriage in the competent authorities of this country, and this marriage should be recognized as valid according to Article 235 of the Family Code of the Republic of Uzbekistan . However, marriages concluded by the parties without observing the conditions of monogamy, the degrees of consanguinity specified in the law and the marriage between mentally healthy citizens established in Article 16 of the Family Code of the Republic of Uzbekistan have no legal significance in the territory of the Republic of Uzbekistan.

In conclusion, I can say that due to the fact that the issues of marriage in the family law of many countries are different, it is natural that problems of conflicts arise in cases complicated by a foreign element. To eliminate them, especially to reduce the number of "lame" marriages, I believe that it is necessary to develop a family code in international private law. Only then, I think, the occurrence of problems in interstate relations will decrease.

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