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COMPARATIVE INVESTIGATION OF THE DISPUTE SETTLEMENT RULE GOVERNING ALIENS' DIVORCE IN LAWS OF IRAN, EUROPEAN COUNTRIES AND EGYPT*

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Abstract: In some countries, the accepted rule is that individuals' personal situation is basically governed by the laws of their national government while in some other countries it is accepted that individuals' personal situation is governed by the laws of their residence. Conflicts between certain international and national laws are observed in the courts of countries that consider the individuals' personal situation is under the governance of their national governments' laws while the issue of conflicts between nationalities whose resolution is prioritized over the issue of conflicts between national laws, is also actionable in their courts. The issues of effects of marriage on nationality and vice versa are brought up in countries that accept that individuals' personal situation is governed by their national governments. In the present article which has been organized under the context of conflicts between certain personal-situation national laws relating to divorce, the causes of the former conflicts have been investigated and resolutions have been suggested for each.

Keywords: Conflict of laws. Personal status. Divorce.

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I. Introduction

Regarding the personal situation which covers individuals' capacity and status, two resolutions are followed by various countries' private international laws. In some countries, a rule has been accepted by which individuals' personal situation is governed by their national laws (articles 6 and 7 of Iranian civil code and article 3 of the French civil code); while in countries relying on English-American law systems, it has been accepted to enforce the law of residence in terms of individuals' personal situation.

Beginning from very long times ago, authors have divided the countries around the globe into two groups based on personal situation. One group follows the factor of nationality while the other follows the factor of residence (Fadavi, 2006: 72). The present article exhibits that the former traditional division is not comprehensive since it doesn't match various countries' dispute resolution rules. Many countries consider that personal status is governed by the law of court site, normal residence law and even the selected law of related parties. Regarding personal status, governance of will and respecting personal agreement have a few proponents. As the claimants of public interests and protection of citizens' rights, governments or states have also certain interests in this context. States have absolute rights for regulation of conditions of marriage and divorce of citizens. In fact states' interests in regulation of marriage rules are thoroughly considered for (H. Bix, 2002: 267). Some governments or states are intolerable of leaving the rules of capacity, marriage, divorce and, will and etc. with the tendency and volition of individuals while providing the contexts for governance of personal volition.

Without investigating the reasons for preference of one rule over the other, it is merely reminded that in case of accepting the rule of enforcement of residence law, the issue of conflict between certain national laws in the context of personal situation will not be brought up. This is because in cases of personal and family relationships where there are different nationalities, the issue will be resolved through reference to the residence law. However, in case of accepting the rule of enforcement of individual's national government's law, this question is raised that which national law should be considered as qualified in cases of different nationalities. Conflicts between certain international and national laws are observed in the courts of countries that

consider the individuals' personal situation is under the governance of their national governments' laws while the issue of conflicts between nationalities whose resolution is prioritized over the issue of conflicts between national laws, is also actionable in their courts. This is because under the English-American system, courts must first of all detect the instances personal situation so that if the case was within the category of personal situation, the residence law could be enforced. On this basis, in the context of issues related to personal situation, the courts of countries that rely on English-American system, neither face the problem of nationality conflict nor face the issue of conflict of certain national laws regarding personal situation. Since Iran is one of the countries accepting that in case of personal situation, courts must refer to individuals' national laws, the resolutions available for disputes in Iran's legal system would be studied and inspected.

II. Laws governing divorce in the United States and European Countries

Various European countries adopt a variety of laws regarding divorce. According to the House of Lords, once the court has approved the person's capacity, the domestic laws of England would be used by the court for enforcement of divorce. Cyprus, Denmark, Ireland, Sweden and Finland adopt the same approach (House of Lords Report, 2006: 6). In other words, in the former countries the dispute settlement rule regarding divorce is set up and enforced unilaterally. Unlike bilateral dispute settlement rules by which the courts are sometimes oriented towards enforcement of foreign laws and sometimes towards enforcement of court site laws, the unilateral dispute resolution law is merely focused on determination of the scope of enforcement of the court site law.

Most of EU member countries used to make use of the bilateral dispute settlement rule while tending to determine the divorce law by making reference to factors such as nationality and residence. Some other countries including Italy, Spain and Poland used to refer to couples' mutual nationality as the main factor. This was while other countries such as Lithuania and Estonia used to enforce the residence law in the first place (House of Lord Report, 2006: 7). The countries of Germany, Netherlands and Belgium were the only countries giving the sides of a

dispute the right to choose the law to be enforced, although that the given right of choice was strictly limited. For example, according to the s.2 of the article 55 of Belgian Private International law, the sides of a dispute were only able to select the laws of Belgium or the laws of their national state in the presence of the court (Franzina, 2011: 107). In such a situation, by accepting the couples' choice law, the 2010 regulation of the EU created an evolution among the member countries in the context of the rule governing the divorce. In 2008 and after receiving the answers of EU member countries, the EU concluded that due to the objections raised by various member countries, it was impossible to create a consensus to achieve the result. Therefore, according to the article 20 of the EU treaty, a specific way for participation of countries has been developed. In July of 2010 the council allowed certain countries to develop a sort of collaboration in the domain of the rule governing the divorce. Five months later, 14 member countries accepted the 2010/1259 regulation through the application of the certificate issued by the EU. This regulation has been in effect since June 21st, 2012 in Austria, Belgium, Bulgaria, France, Germany, Hungary, Spain, Italy, Latoya, Lotto, Luxembourg, Malta, Portugal, Romania and Slovenia. However other member countries of EU are also able to join the regulation. A regulation is a document released by the EU that can be put into effect directly and without the need for being approved by the internal authorities of member countries.

On the other hand, United States adopts a very different rule in the context of marriage and divorce. The credibility of marriage is a function of the law of the marriage location (site), while existence of a relationship with the marriage location's country in terms of residence or citizenship is not necessary at all. Divorce can also take place in either of the states in which the sides are resident. Although most states will deal with such lawsuits only if the sides have lived in that state for at least one year prior to divorce. Each court will enforce its state's rules regarding divorce; even if the state rules are essentially different than the rules of marriage location (H. Bix, 2002: 259).

III. Couple's choice in the EU regulation

In most legal systems, the issue of selecting a rule is evident. Nongovernmental rights such as Unidroda cannot be selected as the governing rule. The regulations of Islamic Sharia or the regulations of the religion of Christianity are considered as nongovernmental rights and therefore cannot be selected as the rules governing the divorce (Stone, 2006: 275). In terms of domestic relationships and affairs related to divorce, nongovernmental rights are mostly appeared in the form of selection of religious regulations. The rules of the Rome III regulation state that the sides can only choose the laws of one country. In addition the regulation only allows for selecting from the laws of residence country, laws of the national countries of the dispute sides, the laws of the court site and etc. However there is no obligation for selecting the laws of one of the EU member countries. The sides of the dispute can either select the laws of a government that are based on religion or the laws of a government that tends to settle divorce related disputes with reference to the religions of the sides. The importance of this issue lies in the fact that most European citizens have multiple nationalities and most of them also are nationals of governments such as Aljazeera or Morocco whose laws include religious regulations too (Kruger, 2012: 15).

IV. Limitations of selecting a law in international documents

In every legal system and international document, selecting a law is bound with certain limitations. In addition to the general system, there are also other specific limitations that source from the nature of divorce and its deep relationship with social and political basics.

1- Entirely domestic relationships: in order to prevent the misuse of the choice right, in some cases the choices of the sides of a dispute are limited. In cases where the legal relationship is entirely domestic and there is no connection to any foreign country, the ability for enforcing a chosen foreign law becomes restricted. On this basis, according to the s3 of the article 3 of the Rome I regulation and the s2 of the article 4 of the Rome II regulation, where there only exists

one legal relationship with one country, selecting a foreign rule will not interfere with the regular trend of enforcement of that country's laws. By regular laws, it is referred to national laws that are enforced irrespective of any enforceable law. These regulations guarantee the public interests and are basically of economic, political and, social natures (Ruhl, 2012: 8).

In the U.S, The same situation applies according to Article 187 of the second edition of the new legal description. In this context, there are no explicit sentences bother than European laws. However, official interpretation of the article 187 manifests that this article can only be enforced if two or more countries are involved. Therefore, if there is only one country, the article 187 cannot be enforced (Ruhl, 2012: 7). In terms of domestic relationships such as divorce, some legal systems including the Rome III regulation have mitigated the choices of sides of the dispute and reached the same conclusion; in this sense the sides of a dispute are only able to select the laws of one of the countries involved in the situation and therefore, in terms of an entirely domestic case, the sides of the dispute cannot select a foreign law.

2- Denial of the right to divorce: in many countries, especially catholic ones, the affair of divorce was for a long time considered as an affair in paradox with public order and even the foreigners were not allowed to use their right to divorce. After huge evolutions and changes, nowadays all European countries recognize the right to divorce, however the divorce apparels may differ among them. In some countries including Finland and Sweden the couples are not obliged to provide the court with any reasons for their divorce; however other countries have adopted other criteria. According to the laws of Malta which has only recently recognized the right to divorce, the occurrence of divorce is subject to four years of separation between the couples, under the condition that the court is convinced that there are no logical ways of compromise between the couples (Franzina, 2011: 89).

On the other hand, in many European countries the denial of the right to divorce is considered as something against public order. In this regard, the article 10 of the Rome III regulation states that if the enforceable rule included no laws regarding divorce, the laws of the court location will be put into effect. This is obligatory and the court cannot avoid it. The entire judges of the member countries of the regulation are obliged to provide couples with access to

the right to divorce, irrespective of their residence and selected rule. If the internal laws of a country prohibit divorce, that country's laws cannot be selected. In addition, prohibition of the right to choose a foreign law is also in effect where the selected legal system does not provide the sides with equal rights. This exception is important when the selected legal system manifests certain forms of divorce, such as Islamic rights in which the right to divorce is exclusive to the husband (Kruger, 2012: 13).

3- Public order of the court site: the article 12 of the Rome III regulation states that enforcement of foreign laws could be prohibited if they are in obvious conflict with the public order of the court site country. This general exception has been interpreted differently among different countries. In terms of divorce, in European countries public order traditionally implies two essential values: first of all, the right to divorce where common life is no longer tolerable for either of the couples. Except the sentence of the article 10 of the regulation, where continuing common life is intolerable due to reasons including domestic violence and the selected law does not allow for divorce under such circumstances, enforcement of the selected foreign law would be in conflict with the public order of the court site.

The article 12 of the regulation has proposed no alternatives in case of enforcement of the rule of public order. Enforcement of the court site law is an ultimate solution. According to the article 5, if the couples have selected a specific country's law that is in conflict with the public order of the court site, the court should enforce the determined law through other related rules mentioned in the article 8 of the regulation. If the aforementioned rules were in conflict with the public order too, the court should enforce the materialistic rules of the court site.

In Iranian law, the law is the most authentic source of private international law. As an instance of personal situation, divorce is governed by the rules mentioned in articles 6, 7 and, 963 of the civil code. According to these regulations, the factor of relation in the context of divorce is the nationality of the couple and in case of difference in nationalities; it is the husband's nationality. However, this sentence is merely related to the essential issues of divorce; while not unlike the other trial instances, the shape of divorce is under the governance of the court site law. The legislator has not mentioned anything about the possibility of compromise in divorce

lawsuits and therefore the law has no power in terms of negation or approval of governance. As a consequence, this question comes up that if governance of individuals' national laws on personal situation and specifically the divorce is a supplementary rule or a magisterial one?

As the divorce and its essential conditions cannot be delegated to the couples, in the same way the law governing the divorce cannot be determined through compromise between the couples. In this regard it can be referred the rule of governance of essential rules on conflict resolution rules. In Iranian law, some scholars answer the former question and the relation factors mentioned through making reference to the governance of the essential rule on conflict resolution rule. In this regard, since materialistic rules of contract laws have a supplementary and arbitrary aspect, therefore the conflict resolution rule in this context has a magisterial trait. On the contrary, since the materialistic rules of inheritance, marriage, divorce and in general, personal situation have a magisterial aspect and individuals cannot compromise against them, the conflict resolution rule for these instances has also a magisterial aspect. Therefore, people cannot marry, get a divorce or, make wills against their national law (Almasi, 2014: 344).

Even in the context of contract relations for which many countries have accepted the governance of will in selection of the governing rule, due to the article 968 of the civil code of Iran, there are significant differences regarding the governance of will and the supplementary or magisterial state of the sentences mentioned in the article 968 of the Iranian civil code. This is while many countries have taken into account several considerations and assume arbitrary dispute settlement rules in the context of contracts, providing the contract sides with a space for selecting the proper law.

Since the recent section of the article 968 of the Iranian civil code only provides foreigner nationals with the right to select laws, some Iranian authors believe that for Iranian nationals, the contract related dispute settlement rule is magisterial and unchangeable (Nikbakht, 2011: 134).

It is obvious that in such a situation where the right to select a law is not clear even in terms of contracts, one cannot talk about the freedom of Iranian nationals in terms of their personal situation and the law governing the divorce. Regarding the divorce of Iranian nationals, even the verdicts of European courts that are based on laws selected by the couples are not

credible and authentic in Iranian courts since the aforementioned verdicts are against the Iranian dispute settlement rule. According to the s2 of the article 169 of the law of enforcement of civil sentences, the civil sentences of foreign courts will only be enforced in Iran if they are not in conflict with Iran's public order. Since the sentence mentioned in the article 6 of the civil code stating the governance of Iranian National laws on the divorce of Iranian nationals has a magisterial aspect, therefore sentences in conflict with it would not be put in effect by Iranian courts.

On the other hand, in terms of divorce of foreign nationals, Iranian courts must deal with lawsuits according to their national laws. First of all, the Iranian court must make a reference to that specific foreign government's conflict resolution rule, for example to the dispute settlement rule of the country of Netherlands. According to the Rome III regulation of the UN, this rule gives the couples the right to select the governing law. Should in this case, the Iranian court announce a verdict considering the materialistic rules of the country selected by the couple? The answer to this question lies in the article 973 of the civil code. In this sense, if the selected law was the law of the court site (Iran), we are faced with a type 1 conveyance and the divorce lawsuit must be dealt with according to Iranian laws. However, if the selected law was the law of a second country, the Iranian court has to deal with the lawsuit according to the national laws of the couple.

Considering the fact that the main aim of creating rules in private international law is to protect private interests, the arbitrariness of the articles 6 and 7 of the civil code and allowing for selecting the residence law instead of the national law result in facilitation of international private relationships while guaranteeing the legitimate expectations of individuals. Having a magisterial look on the article 7 of the civil code prohibits the foreign nationals from even selecting their residence laws and therefore the court is left with the difficulty of proving the foreign law.

V. The solution for conflicts between national laws

According to the general principle established in articles 6 and 7 of Iranian civil code, individuals' personal situation is governed by their national governments. Article 6 of the Iranian civil code states: rules related to personal situation including marriage, divorce and capacity of inheritors would be in effect for all Iranians, even if they live abroad. In addition, the article 7 of the Iranian civil code states: in terms of issues related to personal situation, foreigners living in Iran are subject to their national laws. It is clear that these articles can be enforced only if the sides of the dispute have the same nationality.

Whenever the both sides of the dispute are Iranians, according to the article 6 of the civil code, they will be subject to Iranian laws and if they are foreigners, they will be subject to the laws of their national states. However, as it was observed earlier, sometimes the sides may have different nationalities. Therefore the question comes up that which laws should the court apply in case of lawsuits in which the sides (e.g. husband and wife or father and son) have different nationalities.

In this case, first of all the entire issues related to marriage and divorce should be legally analyzed in both stages of creation of right and international effect of the right; afterwards it should be asked which rule will be governing in each case?

In terms of private international law, the countries that prefer the factor of nationality over the factor of residence and accept the rule by which individuals are subject to their national government's laws in the context of their personal situation, nationality and marriage are mutually effective one each other. Nationality is effective on marriage since the nationals' marriage is subject to their national states' laws (article 6 of Iranian civil code). On the other hand, the marriage is also effective on the nationality since a person's nationality may change due to marriage (articles 986 and 987 of Iranian civil code).

The effectiveness of nationality on marriage is related to the stage of creation of right or the stage of determination of marriage conditions and barriers, therefore the effectiveness of marriage on nationality is related to the stage of international effects of marriage.

By marriage conditions it is referred to the essential conditions including the adequate age, consent of the both sides, while by the barriers it is referred to legal barriers. By the form related conditions of marriage that according to the article 696 of the civil code are under the governance of laws of marriage location, it is referred to issues related to the registration of marriage. For example the issue whether marriage requires an official document or not is considered as a form related condition of the marriage.

If the question that is brought up asks whether a certain condition is considered as a form or essence related condition of marriage or not, for the purpose of judicial description of the issue, reference must be made to the national governments' law. This is because the governing law on the divorce varies depending whether the issue is described as essential or form-related. If the issue is identified as form-related, the divorce would be governed by the national laws of the sides of the dispute, while if the issue is identified as essential, the governing law would be the law of marriage location.

If a man and woman who tend to marry have same nationalities, their marriage's conditions and barriers would comply with the laws of their national government (articles 6 and 7 of the civil code).

The next question that needs to eb answered is that which law governs the conditions and barriers of marriage in case of a man and woman with different nationalities?

In French private international law, in the context of certain conditions with personal nature such as age, consent of the sides, physical ability and the permission of the parents of the sides, each condition is under the governance of the national laws. In case of other conditions that are referred to as bilateral barriers such as prohibition of marriage in close familial relations, both national laws of the husband and wife should be enforced. In addition, in private international laws of Syria, Egypt, Aljazeera and Kuwait, essential conditions required for validation of marriage including capacity and consent of the sides and absence of barriers in case of multiplicity of nationalities, each side of the dispute must be considered as subject to his/her national laws.

In Iranian private international law, the legislator has remained silent in case of the law governing the conditions and barriers of marriage of a couple with multiple nationalities.

Therefore a question comes up regarding the credible regulation in this regard. It may be inferred that since on the one hand, marriage affects nationality, the wife and children will have the same nationality as the husband (s6 of the article 976 and the article 984 of Iranian civil code). On the other hand, the article 963 of the civil code states: if the couples' nationalities were not the same, the personal and financial relationships between them would be under the governance of the national laws of the husband. Therefore, the conditions and barriers of marriage must be considered as under the governance of the husband's national government's laws and whenever, according to the national laws of the husband the marriage is considered as valid, it must be considered as valid in all circumstances, even if the wife's national law considers it as invalid. The article 963 of the civil code determines the law governing the relationships between the couples, not the law governing the conditions of creating a domestic relationship. Since the essential rules related to the marriage conditions and barriers (articles 1041 to 1070 of the civil code), are separated from the essential rules related to the effects of marriage and or the duties of couples against each other (articles 1102 to 1119 of the civil code), in case of multiplicity of nationalities, the international rules or the dispute settlement rules related to these categories of rules should also be separated. Otherwise, marriage of a Muslim Iranian woman with a non-Muslim foreigner man should be considered valid, while Iranian law considers such a marriage as revoked. On this basis, at the right creation stage, none of the sides' national laws should be preferred over the others and it is better to consider that the man and the woman are each subject to laws of their national governments.

Regarding the divorce as a way to revoke marriage, while determining the valid law, two points must be consistently taken into account. First of all, regarding the divorce of foreigners the issue of having the right to divorce must be clarified. In other words, the national governments of the couple must include divorce as an official affair. This is because some countries' may not recognize divorce as an official affair and the marriage would only be revoked by the death of either of the sides. The other point is that the governance of the foreign law on the issue of divorce must only be adhered to in case of essential issues including the causes of divorce; while in terms of non-essential issues such as the proceeding that should be adhered to for divorce; no references will be made to foreign laws. For example, whenever a foreign man

and woman with different nationalities form a divorce lawsuit in Iranian courts, the court should deal with the case according to Iranian civil proceeding ordinance even if the foreign law has set special protocols for dealing with divorce cases; this is because there cannot be two types of proceeding ordinance in a single country.

However, determining whether the issue at hand is related to the proceeding ordinance or the essential conditions of the divorce is the duty of the court that is in charge of dealing with the case. This is because describing the form-related and essential issues is a main description that affects the determination of the enforceable law and it should be put into effect according to the laws of the national laws of the sides or the laws of the court site. For example, whenever the national government's law states that the courts are able to deal with the case according to the national laws of the either side of the dispute, whenever a foreign spouse requests arbitration, the court must accept the request because reference to arbitration is not an essential condition of divorce, rather it is an issue of the manner of dealing with the dispute.

The next question that comes up is that the laws of which country should be enforced for detection of causes of the divorce in case multiplicity of nationalities?

In French law, prior to the 1976 rule that clarifies the content of the article 310 of the French civil code, the French proceeding solution maintained that in case of wives and husbands with different nationalities, the law of the common residence of the couple would be the law governing the divorce. Whether the couples are both foreigners, or one of them is French, and whether their common residence is in France, or another country, in cases where the husband and wife have no common residence, the laws governing their divorce would be the laws of the court site. According to the new rule that provides a new solution for divorce of couples with multiple nationalities: the divorce would be governed by French law when the husband and wife are both French nationals, they both live in France, no foreign laws are considered as proper and, the French courts are competent for dealing with the case.

In Egyptian law, whenever the husband and wife have no common nationality, the law governing the divorce will be the national law of the couple. S2 of the article 13 of Egyptian civil code with its sentence being similar to the one found in s2 of the article 14 of Syrian civil code, states: regarding the divorce, the law of the national governments of the couple would be in

effect. However in terms of dissociation, the law in effect would be the national law of the couple. The reason why the legislator has differentiated between the sentences of divorce and dissociation lies in the fact that the divorce takes effect through the will of the husband while dissociation takes effect due to the court sentence and therefore, a change in the nationality of the person in the time between filing the lawsuit and announcement of the court verdict would not result in the issue of conflict.

In Iranian private international law, the sentence mentioned in article 963 of the civil code regarding the effects of marriage and personal and financial relationships between the couples can be enforced in the context of divorce.

On this basis the rights and duties related to the previous nationality are provoked and instead, the rights and duties related to the new nationality come into effect. Therefore, in case of change of nationality, in order to determine the law governing the divorce, the last nationality of the person must be taken into account. Consequently, for putting into effect the sentence mentioned in the article 963 of the Iranian civil code, Iranian courts must consider the husband's nationality during the emergence of effects of marriage and during the divorce.

The effects that rise after the divorce include the so-called phrase of "Idda". Compromise during the Idda (belonging to Islamic Jurisprudence, nonexistent in non-Islamic countries), the alimony of the divorcee and, the use of the husband's sure-name by the divorcee are considered as the effects of divorce.

Idda is one of the effects of divorce that exists in the laws of entire Islamic countries in addition to some non-Islamic countries such as France. As a definition, the Iranian civil code provides: Idda is defined as a time-length during which the divorcee cannot marry another man. The articles 1151 to 1157 of Iranian civil code include the sentences of the former.

Compromise during the Idda is an Islamic construct too and does not exist in non-Islamic countries. As another effect of divorce, the articles 1148 and 1149 of the Iranian civil code include the sentences regarding it.

Additionally, the alimony of the divorcee is another effect of divorce and in this regard, the article 1109 of the Iranian civil code explicitly states that during the Idda, the husband is responsible for the alimony of the divorcee with whom he has been having relations, unless the

divorce is in progress. Nonetheless, after the length of the Idda, the woman cannot receive any alimony from the husband unless she is pregnant where she is given the right to receive alimony until the time of delivery.

Another effect of the divorce is the divorcee's right to make use of the husband's sure-name. The article 42 of the registration rule (1976) states that: under the consent of the husband, the wife can use the sure-name of her husband during their marriage and in case of divorce, continuing to use the husband's sure-name is only subject to the permission of the husband himself.

The next question that is raised is that what laws govern the issues related to couples after divorce? Is the law governing the divorce also effective on the effects of divorce? For example, considering the fact that alimony is one of the financial effects of marriage which in case of multiplicity of nationalities is governed by the husband's national government's law (article 963 of Iranian civil code), is the alimony of the divorcee governed by the rules of the national government of the husband too?

In French law, the same rule governing the causes of divorce, also governs the effects of it. In English law however, the law governing the manner and possibility of occurrence of divorce, generally governs the effects of divorce and the financial relationships between the couple after occurrence of the divorce. In addition the court that is competent for dealing with the divorce will also be competent for determining the effects of divorce on the couple and their children.

In Egyptian law, the law governing the effects of divorce on the divorced couple is the same law that governs the divorce. At the end, it is emphasized that the law governing the effects of the divorce on the relationships between the father, the mother and, the children may differ from the law governing the effects of divorce on the relationships between the divorced couple. In Iranian private international law, the same law ruling the causes of the divorce usually governs the effects of the divorce too. For example as an answer to the question regarding the alimony of the divorcee, it can be said that that considering the fact that alimony is a financial effect of marriage, if the couples have different nationalities, the governing law would be the law of the national state of the husband. However, as it was also evident in Egyptian law, the law governing

the effects of the divorce on the relationship between the fathers of the families, the mothers and, the children may differ from the law governing the effects of divorce on the relationships between the divorced couples.

VI. Conclusions

Personal situation which is an important issue in the context of private international law is under the influence of individuals' nationality and different countries' nationality laws have different sentences regarding obtaining nationalities or losing them. The consequential result of effectiveness of nationality on personal situation is emergence of conflicts between several national laws regarding personal situation especially the marriage and the divorce.

The effects of nationality on marriage (at the stage of establishment of marriage) and the effects of marriage on nationality (at the stage of effects of marriage) are evident in countries in which the individuals' personal situation is governed by their national government's law. The reason why nationality affects marriage is that in some countries' private international laws, including Iran, marriage is considered to be governed by the national laws of individuals and therefore, in order to determine the conditions and barriers of marriage, the nationalities of both sides must be clarified. On the other hand, in case of multiplicity of nationalities, marriage can affect the wife's nationality and changes it despite being governed by the national states of the sides.

In EU, the 2010 regulation has in a limited manner allowed the couples to select the law governing their divorce from the laws of various countries. In addition, the judicial proceeding of the United States has accepted the right of the couples for selecting the law governing their marriage under the conditions of lack of conflict of the selected law with American law and, existence of a relationship of some sort between the selected law's country and the couple. In Iran however, materialistic rules, expect for special cases and the dispute resolution rule regarding divorce, are considered as magisterial and non-violate-able laws. In addition, regarding foreign nationals, the article 7 of the Iranian civil code persuades courts towards the enforcement of the national law of aliens.

On this basis, conflicts between several national laws regarding the issues of marriage and divorce are due to the various nationality-related laws accepted by different countries and resultantly, they are due to the multiplicity of nationalities or difference of nationalities in domestic relationships. Comparing the private international laws of different countries manifests that conflicts between various national laws have various solutions too. In case of difference of nationalities in personal and familial relationships, some countries have accepted to enforce the residence law while other countries have accepted to enforce their national laws. Iran belongs to the group that follows the national rule or the rule of national government.

Finally in order to effectively and efficiently state and solve the issue of conflicts between several national laws regarding marriage and divorce, it is essential to separate the stage of creation of right which is the stage of creation of the marriage relationship and, the stage of international effect of the right which is the stage of effects of marriage. This is because the solutions of conflicts in these two stages are no essentially the same. In other words, the law governing the stage of creation of the right (creation of the marriage relationship) and the law governing the causes of divorce may differ from the law governing the stage of international effects of the right, which is defined as the rights and duties of couples against each other and the effects of the divorce.

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