Civil Rights of Foreigners in Private Legal Relations

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Abstract

The movement of people, goods, money, intellectual property and ideas, nowadays is a normal phenomenon and important characteristic of the contemporary world, and certainly would be characteristic for the future, even in a greater extent, when we consider the fact that globalization today is one of the phenomena that has swept across the globe. Knowing the fact that the intensification of legal relations with a foreign element as to the type and for the content imposes various problems of law, which greatly appears repeatedly and stretches in a new form and new dimension, so today in terms of development contemporary society in general, there are no legal areas where no foreign element appears. For this reason, taking into account the development and intensification of legal relations with a foreign element, especially in the late twentieth century, with the dissolution of a significant number of countries and the creation of new states there are new situations created, which seek diverse solutions that would answer the interests of legal entities, which should be in accordance with the principles of the international community and for this reason a study of this topic will be analyzed.

Keywords: private-legal relations, foreign element, state, legal entities, international principles.

Introduction

Like any other branch of law, also the Private International Law has passed through various stages of social development, being conditioned by social and economic trends, as well as the development of productive forces and relations of production. For this reason, it is important to note that the Private International Law, was modified more and more over time, including institutes such as the legality, or legal conflict resolution (Kuçi & Bilalli, 2006, 7-11). The circulation of goods and services from the producer to the consumer, especially to the last consumer of those goods, influences the perceptions of masses in political and ideological aspects, which fully involve in a foreign element (international element) and create new legal problems that require new legal solutions.

Civil Rights of Foreigners – Understanding

The term "civil rights", is derived from Roman law, that included only Roman citizens with full rights, and theright that belonged to "ius propriam civitatis" (Berger, 1953, 527). Regarding the origin of the expression "civil rights", the words "civil rights" must not be understood under French doctrine as all private rights, respectively the civil rights, but only those that are reserved for local citizens, in other words, only those private civil rights that are not treated as so-called "natural rights", that belong to every person (Gruda, 2010, 4-7) as well as foreigners. According to another point

of view, which is now accepted by all in the doctrine and practice of the states, the phrase "civil rights" includes family rights, inheritance, binding and real law, right to industrial property and civil legal relations with a foreign element (Jezdiç, 1977, 15).

In the international movement of goods and services, as well as family and inheritance relationships that arise from such circulation, such as subjects of legal relations appear both nationals and foreign citizens –national and foreign legal persons (Bilalli & Kuçi, 2012, 108-109). Each state on based on its own territorial sovereignty, decide on relations with a foreign element The states, do this under their territorial sovereignty, especially on the basis of their own right to pursue sovereign power over people and things that are in the territorial integrity of their own, especially on the basis of the rights expressed in the maxim that derived from Roman law (Jezdiç, 1977, 14) "Quidquid est in territorio, est etiam de territorio", which according to this maxim, it is meant that this maxim is more related to Public International Law (Oppenheim, 1955, 451-453).

Civil Rights, their volume and Legal Ability of Foreigners

The civil rights of foreigners are often not sufficiently distinguished from the legal ability of foreigners. However, there is a difference between them which is expressed based on the fact that civil rights depend on the possibility that the foreigner may appear as bearer of civil rights but considering the quality of his/her as a foreigner, because the enjoyment of these rights is raised as a preliminary matter. In the legal doctrine of civil rights of foreigners, citizens may provide reciprocity, which means the expression of the desire to ensure mutual and equal cooperation between two countries (Kuçi and Bilalli, 2006, 173), for the enjoyment of civil rights of foreigners in their territory or to apply the "retorsion" measures, which implies a kind of revenge (Kuçi and Bilalli, 2006, 182

On the other hand, in terms of volume of civil rights that are enjoyed by foreigners, it is the responsibility of each state to autonomously set the volume of these rights. So, the state determines the volume of these rights and conditions for the enjoyment of these rights, but these rights may be assigned according to the general rules laid down in Private International Law and the volume of these rights that are enjoyed by foreigners should be considered if they are within the limits of civil rights of citizens of the country, or these rights may cross that border (Sajko, 2005, 222-225) and for these two issues, there are two different views: According to the first view, the subjects of international relations can only be countries but not individuals; Private International Law cannot adjust the volume or the civil rights of foreigners, nor assign to states conditions for the enjoyment of their rights. In addition, this view emphasizes the argument that the regulation of the civil rights of foreigners on its own territory is made from each state separately, based on their own territorial sovereignty and does not make the international community or any other body of this community (Jezdiç, 1977, 17). While, according to the second view, there are general rules that international law poses to regulate the civil rights of foreigners and that there is an international obligation of countries to apply these rules. Authors use some international contracts (agreements) as evidence for the existence of these regulations as the Convent of

Lausanne (Lausanne Peace Treaty) dated 24.7.1923, which deals with the rights of foreigners that will be regulated under international law, and the decision of the court of international law in The Hague, regarding the Chorzow dispute (Jezdiç, 1977, 17) etc.

It is a fact that the general rules, which will be enforced by the international community for civil rights of foreigners are contained in the UN Charter and include:

· The principle of sovereign equality of states;[1]
· The principle of the prohibition of discrimination based on race, sex, religion and language (Jezdiç, 1977, 17);
· The principle of non-intervention in the internal affairs of other countries[2] and
· The principle *pacta sunt servanda* (Kull, 2001, 44).

The respect of the principle of the sovereign equality of states in determining the legal norms for the civil rights of foreigners, whether those rights are presented as relatively reserved are subject to the formal reciprocity. The respect of the principle of the prohibition of discrimination based on race, sex, religion and language in determining the legal norms for the civil rights of foreigners is expressed in modern conditions, mostly in indirect form, especially when, in addition to the general rule that makes fundamental principle of the enjoyment of these rights in a country are considered the civil rights of citizens of the country based on discrimination by race, sex, religion and language. For example, in Germany and Italy during fascism and nazi regime, racial discrimination law existed in the marriage with Jews, and in today's conditions, such discrimination by sex, religion or race is in continual extinction, but it does still exist in some countries, even in democratic countries. This principle can also be respected directly from countries that are signatories of the UN Convention dated 21.12.1965, for the elimination of all forms of racial discrimination.[3]

The harmonization with the principle *pacta sunt servanda* is seen in the denial of the primacy of law of the country in comparison with an international agreement, which contains rules for the civil rights of foreigners in accordance with the principles stated above, the non-abolition of the institution of international public order with similar legal institutions, of the rules provided with such an international contract, etc.. All these principles represent the limits of the territorial sovereignty of a state in the case of appointment of legal norms in this matter (Nolte, 2009, 78).

Universal Declaration of Human Rights and Civil Rights volume of Foreigners

General Declaration on Human Rights, in addition to some political rights and economic and social rights, includes in itself also several civil rights (property and statutory) rights that according to this declaration should be recognized for all citizens (both domestic and foreigners).[4] This declaration contains rules that apply to everyone (citizens of the state of the country and to foreigners). Also, it should be noted that

[1] Article 2, point 1 of the UN Charter.
[2] This principle derives also from the Article 2, paragraph 4 of the UN Charter.
[3] For more information, visit: http://legal.un.org/avl/ha/cerd/cerd.html.

international rules that are contained in this declaration are not binding for states, because they are not international agreements, but only declarations (Jezdiç, 1977, 19), which is left to the will of states to implement it and as such is not binding for countries.

The declaration can also be seen as a call to the countries that with gradual national and international measures to ensure the recognition and application of the general and real rights and freedoms set in this Declaration (Gruda, 2010, 22-28). Each state may impose certain restrictions on exercise and the enjoyment of the civil rights of foreigners with its own internal laws, especially for reasons of public security and public health. Each state under the UN charter is obligated to cooperate and take joint action with the UN in order to ensure the protection of freedoms and fundamental rights of the people, regardless of religion, race, sex and language (Jezdiç, 1977, 19).

According to one view, which reigns in the practice of many countries, the issue of the enjoyment of civil rights (property and statutory), by foreigners is a preliminary matter, where the negative or positive solution of which depends the possibility of creating full civil-legal relationship with a foreign element (Jezdiç, 1977, 20-21). According to this view, the authority of the state, where there is the question of legal regularity of such relationship, in advance has as obligation, to check according to the norms for the civil rights of foreigners and see whether a foreigner can be the bearer of a property right or statutory rights in the country, considering the quality of the foreigner. So, only when it is decided positively, then is going to be apply the law, which prefers the norms of the collision of the country, a norm in which does consider the ability to enjoy the civil rights of foreigners (Varadi & Bordash & Knezheviç, 2005, 474-476).

According to the second view, which is derived from French doctrine, which is represented in a part of the French and Greek doctrine, the issue of the enjoyment of civil rights of foreigners is not a preliminary matter, from the positive solution of which depends the possibility of creating the civil legal relations with a foreign element, but it must first consult the norm of the country of collision and the right of the country, which it prefers over the issue and whether accept the right of the foreigners to certain civil rights or not and in case of positive response then will apply the country's civil rights of foreigners. According to this view, this norm could be applied only if the national law of *decujus* recognizes such a right to the foreigners. And this is dependent in most cases in the principle of reciprocity, whether the other state recognizes such a right to the foreign citizens (Varadi & Bordash & Knezheviç, 2005, 195-200).

Civil Rights of Foreign Persons

In doctrine, the division of civil rights of foreigners is done in two ways: In terms of civil law and possibility of foreigners to uses those rights. In terms of civil law, civil rights of foreigners are divided into family law, inheritance, claims and real rights, including the right to industrial work and the right to intellectual property (Jezdiç, 1977, 32-33). Breakdown in possibility for foreigner citizens to use the civil rights does exist since the XIX century, from the period of issuance of the civil codes of

bourgeois states. According to this division, all the civil rights of foreigners are divided into three main groups: in the rights absolutely reserved (rights which foreigners can not enjoy at all), relatively reserved rights (rights which foreigners can enjoy if certain condition are met, as it is the reciprocity, permit, residence, etc.) and the general rights (rights that foreigners can enjoy with the same conditions as citizens of its own country) (Jezdiç, 1977, 33-34).

In the first group are family rights of foreigners, the real rights of foreigners connected with real estate, the inheritance rights of foreigners and rights of foreigners to industrial property. From this group of civil rights is depending the possibility of establishing those categories of civil legal relations with a foreign element when, in addition to the appearance of the will of the foreigner, is required an act of the government of one sovereignty. Regarding their application, by the authority of a state, it is important to be known whether a foreigner should be the carrier of their civil legal relations with a foreign element to multiply expressed, or expressed as simple (eg. should the foreigner enter into marriage abroad, should the foreigner win the right of ownership to real estate located in the territory of a foreign state, should the foreigner be inheritor of the inheritance left abroad, does the foreigner acquires the right to a patent in a foreign country, or such rights must be realized only in the territory of his country, etc.). In the first case, when in front of the body of a country is brought the issue of full executiveness of civil legal relationship with a foreign element, which is expressed as multiple, eg. when the foreigner has a marriage abroad, or when the foreigner has acquired the right of ownership of movable property located abroad, it will not apply the norms of the country, because it would be contrary to the principle of the sovereign equality of states, and it can only accept or not accept such a relationship.

In the second part are belonging the real rights of foreigners to movable things, the rights of foreigners claims and copyright of foreigners (the rights associated to intellectual property of foreigners). For this group of civil rights of foreigners is characteristic that since the recognition of these foreigners, depends the possibility of establishing a civil-legal relations with a foreign element that are created with the appearance of the will of the foreigner, without the act of the power of its sovereignty. And the third division of the civil rights of foreigners does not eliminate, but it rather involves division of these rights by categories of civil rights law and by the possibility of their use by foreigners. In terms of law, this division is important because, if in the law of one country are not recognized the particular rights from the first group of civil rights of foreigners, for example to enter into marriage, acquire the right of ownership in real estate, he / she cannot create civil legal relation with a foreign element, but only factual report, which is not going to be recognized as legal relation also elsewhere, therefore remains factual relation in national understanding and international level as well, but in this paper will be explained only some issues itself dealing with family rights and where the possibility of establishing those categories of civil legal relations with a foreign element when, except for the appearance of the will of the foreigner, is required the act of power of one sovereignty, so it is required the active participation of the state government.

Knowing the fact that this field includes a wide matter, in this scientific work, the main focus will be on family rights of foreign persons. With regard to family rights,

the beginning of the issuance of the national civil codes in the nineteenth century has made those countries to establish the most progressive principles of family rights, presenting a negation of the principles taken from Roman Law. In this way, today in modern conditions it does exist Common Family Law - General in all countries of the world, regardless of their socio-economic system and the extent of their development, by not forgetting the few countries that have regulative characteristics of their family rights within their territories. The following countries may be two kinds: in those countries where the rights of family law are supported in principle in the most progressive legal aspects, such as the principle of equality of men and women, the equality of legitimate and illegitimate children, then racial equality and freedom of conscience, religious and family rights based on opposing principles, for example the right of paternal power, the right of the power of man, etc.. However, today in all modern countries, there are some important rights such as the right of foreigners to enter into marriage, the right of foreigners to adopt, the right of foreigners to legitimate and the right of foreigners to act as caretaker (Jezdiç, 1977, 34-35).

The right of foreigner to enter in marriage

According to the declaration on human rights, the right to enter into marriage is one of the general rights and fundamental human rights that should be known to every person, which means that the declaration treats this as a matter which according to legal classification enter in general rights category. As such it should be known to every person, regardless of whether it is national or foreign citizen. Today in international proportions, when it is viewed the right of foreigners to marry in one country or in another country, it should be distinguished the right of foreigners to marry, where marriage with foreign element is expressed as simplified in subject would be unique (the right of a foreigner that in the country or in front of the authority to enter in marriage with a foreigner), the right of foreigners to enter into marriage, in which the foreign element is expressed simplified in subject would be mixed (the right of a foreigner in the country or in front of authority of the country to enter in the marriage with the citizen of that country). The difference here is that in the first case, it is about the right of foreigners to enter into marriage with a person, a person that does not belong to personal sovereignty of a state where the marriage is fully done, while in the second case the foreigner should enjoy the right as the local citizen of its own country, which belongs to personal sovereignty of the country of origin (Jezdiç, 1977, 35-36).

1. The right of foreigners to enter in marriage, in which a foreign element in the subject is expressed as simple would be unique or in other words, the right of foreigners to enter into marriage with a foreigner, today, in all countries, as a rule is treated as a universal right, as a right which on equal terms enjoys the foreigners and local citizens of the country. This right is granted to foreigners, only if marries with the foreigner citizen in front of the authority in the territory of the country. This means that the foreigner is not entitled to enter into marriage with a foreigner in front of its own authority in foreign territory, namely the foreign citizen have no right to enter into marriage in front of the consul of the country or in front of diplomatic-consular, when

such a marriage wishes to have with other foreigner (Jezdiç, 1977, 36-37). Although as a foreigner is recognized the universal right that may enter into marriage with a foreigner in front of the own authority within the territorial sovereignty, which does not mean that the right of the foreigner is recognized in all countries, as the general right in the face of the Declaration on Human Rights and in accordance with the principles of the UN Charter and that this right, which is granted to a foreigner has the same content in all countries, because it is the right of each country to individually regulate this matter without interference from outside. While, on the other hand we have many countries today, where the right of foreigners to enter into marriage with a foreigner is recognized as a universal right, which is in accordance with the UN Declaration for Human Rights and is in compliance with the UN Charter.

2. The right of foreigners to enter into marriage with a local citizen, especially entering into marriage in which the foreign element in the subject is expressed as simple, would be mixed, it is important not only because this right can be recognized to foreigner in certain conditions (such as reciprocity between the countries). Regarding this nowadays there are three main systems (Jezdiç, 1977, 37-38):

a) According to the first system - the system of general law of the foreigners to marry with local citizens of the country, the foreigner has the right to enter into marriage with a citizen of the country, under the same conditions as every citizen of the country. This means. if the foreigner enter into marriage with a local citizen of the country, in a country that in view of the right to enter in the marriage makes the discrimination based on race, as was the case with Germany and Fascist Italy, or by religion, as is the case today in several capitalist countries nor to its own local citizens, will be entitled only if between him/her and the local citizens of the country, there is no to race and religion distinctions. Rather, if such a marriage is made with local nationals, in the country which is not making racial, religious discrimination even against its citizens, after all the foreign citizen will be entitled to marry, regardless of their racial background.

b) According to the second system, the right of foreigners to enter into marriage with a local citizen of the country is relatively reserved, respectively a right which is recognized to the foreigner after completing the certain condition, usually if it gets special permit by the state, where the marriage should be done. However, it cannot be considered that this system belong to certain states, since a foreigner who wants to enter into marriage in their territory, seek to present the so-called *"nulla hosta"*, or the document that there is no obstacle to enter in such a marriage under the law of the state, whose citizen is a foreigner, or may require some other certificates with similar character. This system according to which the right of foreigners to get married is based on special permission to marry, issued by the competent authority of the country in whose territory should enter the marriage, which today exists in a small number of states.

c) In the third system, which the right of foreigners to enter into marriage with a local citizen of its own country is considered as an absolutely reserved right, where foreigners cannot enter in the marriage status.

The right of foreigner in adoption

The right of adoption has gone through different periods of social development, ranging from slave society, feudal, then capitalist one, and even in late periods of establishment of national states, the right for adoption, respectively to be adopted has been considered a fully reserved right (Scoles, 1992, 559). France and England are the first states that the term absolutely reserved regarding the adoption have removed from their legislation, and later other countries have started to apply such a practice, but this does not mean that the right of foreigners to adopt or to be adopted is a universal right. As to inheritance should be recognized the right of foreigners to adopt in which foreign elements to the subject is expressed as simple would be unique (the right of a foreigner to adopt or be adopted by a foreigner), from the right of foreigners to adopt, when the foreign element to the subject is expressed as simple, would be mixed (the right of a foreigner to adopt or be adopted by national citizen) (Jezdiç, 1977, 39).

This distinction should be made definitely, because in the first case with the adoption is created only a special personal and property relations, while in the second case in addition to these special property and personal relations, are created consequences in obtaining citizenship, namely the creation of legal public relations between such persons and the national state. For this reason, it is recommended that in the first system, to the foreigner must be recognized the right of adoption and for the second case should be taken into account several different solutions, because with this adoption a new link is being created between the foreigner and the national state and in this regard there are several systems (Jezdiç, 1977, 39-40):

a) Under the first system, the foreigners right to adopt or be adopted by a local citizen of the country, it is a general right, because in these countries adoption is not the way of acquiring the citizenship, as well as the loss of citizenship.

b) In the second mixed system, the right of foreigners to adopt the local citizen of the country is only recognized and allowed to the local citizens of the country, especially it is considered as relatively reserved right. On the contrary, the right of foreigners to be adopted from the citizen of its country is considered as a relatively reserved right, respectively, as a right that is recognized to the foreigner when some of the conditions are fulfilled, where as the condition can be taken the residence in home country or that the adoption will be recognized by the state of a foreigner, etc..

c) Under the third system, the right of foreigners to adopt or to be adopted by a citizen of the country is an absolutely reserved right, where the foreigner is not entitled to adopt or be adopted in the national state.

The right of foreigners in legitimization

The legitimization right, as the marriage and adoption has gone through different stages of social development. In the slave and feudal system, the right of foreigners to legitimization has been completely prohibited, while nowadays the right to legitimization is an universal right, only if accepted in all its forms by other countries and if it is not a way of earning or losing the citizenship. With legitimization is meant,

the gaining of civil legal rights, which are enjoyed by other children, which are not obtained in a natural way, with the birth (Scoles, 1992, 553). Regarding how states recognizes the right of foreigners in legitimization, there are two different systems, where this right is presented as the absolutely reserved right and relatively reserved right (Jezdiç, 1977, 41).

a) The right of a foreigner in legitimization is treated as absolutely reserved right to the states in which legitimization is possible only on the basis of marriage concluded later or under recovery of marriage, since the right of the foreigner in legitimization, in these cases is hidden under the right to marriage. This, means that the right of foreigners in legitimization can be displayed as an absolutely reserved right, when also the right of foreigners in marriage is treated as absolutely reserved right.

b) However, if a country treats the foreigners right to marriage as relatively reserved right then the right of the foreigner on legitimization will be regarded as relatively reserved right.

If it comes to those states that legitimization is recognized as one of the ways of obtaining or termination of the citizenship, must distinguish the right of a foreigner for legitimization in which the foreign element is expressed on the subject would be unique (right of foreigner on its own country to legitimize the foreigner), the right of foreigners for legitimization, in which the foreign element is expressed as simple would have been mixed (the right of foreigners to legitimize or be legitimate citizen of the country), because in the first case, recognition of the right to legitimize the foreigner cannot cause the change of the citizenship of the country, while in the second case, the change of the citizenship of the country in those countries is a consequence of public rule of legal legitimization.

The right of foreigner to be Caretaker

Even when there is the question that the foreign citizen must be registered as a caretaker, we need to be aware of whether the issue is treated as a universal right or as a relatively and absolutely reserved right.

The right of foreigners to be the caretaker of the foreigner citizen - this right is granted to foreigners in all states, regardless of its quality as a foreigner, even in view of legal and theoretical aspect is explained by the fact that is entitled to be assistance of the caretaker of his country. So, it is considered that its authorizations and powers of caretaker may use in the territory of the country, as the caretaker is arranged by local caretaker of a foreign country. This right of foreigners in some countries is limited, if it comes to the wealth of disabled persons, only in terms of his movable wealth, since it is considered that the state where the real estate is located, may assign a special caretaker for that fortune (wealth) (Jezdiç, 1977, 42-43).

Conclusions

This paper showed that in today's world there are different socio-economic systems, which constitute also different legal systems. This study showed that the international traffic of goods and services is raising and therefore family and inheritance

relationships that are linked with this circulation are also very large.
For this reason, the international community in recent decades has tried to somehow protect these rights and regulate this matter in the best way possible with international agreements. However, there are still things that must be done, because states tend to maintain their territorial sovereignty by bearing in mind the aspect of reciprocity with other states.
Based on what has been said above, I may also point out that there are major differences between countries in regulating the rights of foreigners, because states have not managed somehow to unify their legislation in terms of civil rights of foreigners, although there are various institutes that somehow regulate these relations.
Finally, I would estimate that the most powerful globe organization such as the UN and EU as a regional organization should make a call to all countries of the world for a huge cooperation between them, in order to regulate and harmonize the rights of foreigners as fundamental freedoms.

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