



Removing Obstructions for Achieving Courts' Coordinated Solutions in the Subject of Characterization (Using the Experience of French Law)

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Abstract

Characterization means placing the matter in the category of communication to determine the applicable law, it is a global issue that in private international law, with the conflict of characterizations, due to the internal nature of the provisions, it gets a certain complexity. Since in Iran bilateral method prevails, the judge faces different characterizations including basic, secondary, connecting factor and preliminary problem from the design to the resolution of the issue.

The problem of description with this range is raised in a bilateral method. In this method, the starting point of the argument is the topic; After doing this task, the description of the communication factors used in the conflict resolution rule between the court and the foreign court and then the description of the issue in the foreign legal system will be presented. In the bilateral method, the issue of preliminary description is also a place for discussion. While in the unilateral method, the issue of description cannot be discussed with this scope because the unilateral method is a method in which the rules for resolving the conflict of law only specify the scope of the laws of the same country and it allows that A law that considers itself valid should be applied to the matter outside this field. In assuming the jurisdiction of the law of another country, it is inevitable to accept the descriptions of the subject there.

In this situation, the selfish implementation of the system of *lex fori* on all characterizations, challenges the unification of solutions; An ideal that requires achieving the same results in different situations in domestic and international law. In the situation where the national writers have confused the types of description with each other and have not explained the conditions governing it accurately, the current research is trying to provide a solution by using the experience of French law-as an inspiration for Iran's private international law- and focusing on the separation of characterizations.

Of course, there is a limitation in the bilateral method that makes it impossible to achieve the goal in some cases. In fact, it is not possible to violating conflict of law rule of *lex fori*: although different interpretations of the legal systems of the subject lead to the issuance of conflicting verdicts in different countries, but the basic characterization



must be done according to the rules of *lex fori*.

Strengthening the participation of foreign country is helpful in cases such as the preliminary issue: Finding a solution for the "basic issue" depends on solving another issue called "preliminary issue"; A preliminary question is asked, the answer of which has a direct impact on solving the basic issue. If to solve the basic issue, the conflict resolution rule of the *lex fori* is referred to, regarding the preliminary issue, the result can be achieved with the same formula. In this situation, internal integration and in some cases international coordination is guaranteed. For example, it is suitable the conflict resolution rule of the *lex fori*, in addition to determining the competent law on inheritance rights (basic issue), must introduce a law to prove the marital relationship and verify the relationship between the parties (preliminary issue). The coordination of issued decisions and ensuring the security of litigants is the result of the integrity of the legal system of the *lex fori*, which should be welcomed.

Determining the rule of conflict resolution regarding the subject in question should not be considered as the end of the problem of descriptions, because as soon as conflict resolution rule of the *lex fori* is determined, or if the competence of the rule of external conflict resolution is confirmed, the problem of describing the communication factors used in them emerges. The description of the relationship factor contained in each rule with the regulations of the country of origin brings internal integration and international coordination.

It is clear that if the foreign legal system is competent, its (secondary) descriptions of the subject will be accepted; The coordination of solutions has such a requirement. As a result, in the assumption that this legal system places the issue in a different relationship category and applies a different conflict resolution rule to it, the *renvoi* finds a new origin. In other words, in some cases, the conflict resolution systems of the *lex fori* and the cause use the same communication factors and interpretations, leading to the specific approach of the foreign legal system in determining the content of the communication category, subjecting the matter to another conflict resolution rule, which is the law of another country. Saleh knows and brings about *renvoi*. Acceptance of this type of *renvoi* in a way violates the rule of conflict resolution of the *lex fori*, which is not acceptable in the bilateral method. It doesn't matter if the description of the country of cause of the issue is accepted, or that the description is made based on the rules of the *lex fori* from the beginning, and as a result of the different description of the country of cause of the issue, the *renvoi* of the descriptions is accepted and other regulations are applied; In both cases, the description of the country is the determining factor. Therefore, in accepting the secondary description of the country that caused the issue, one should not proceed to the stage of confirming the resulting *renvoi*.

Keywords: Basic characterization, Preliminary problem, Connecting Factor, Unification of solutions, Secondary characterization.



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