RULES OF NECESSARY APPLICATION OF INTERNATIONAL WORK CONTRACT AND ITS NATIONAL ORGANIZATION

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ABSTRACT

International work contract has its features and characteristics that distinguish it from other contracts. These features are reflected in its elements of work, wages and dependency. They are also reflected in defining the international character of this contract, i.e., when the work contract is international then it raises the problem of conflict of laws within the scope of private international law. Since the division of the law into public and private is based on certain criteria to reveal the extent to which a particular law belongs to any of the two branches, and the prevailing criterion for distinguishing between the two laws is the criterion of whether the state or a public legal person is a party to the relationship that the law regulates as the owner of sovereignty and authority; then if the state, as a sovereign regulates the rules governing this relationship they are considered public law. Furthermore, the rules for which the state is the subject are also considered public law. On the contrary, the relationship between two parties, one of whom was not a person of public law, is governed by a special law. The current study investigated the scope of the international work contract law and the extent of the extension of the authority of laws with necessary application and foreign common law rules to govern the multiple issues within the scope of this contract since work relations are closely related to the provisions and regulatory rules that are required.

Keywords: International Law, Public Law, Contract

INTRODUCTION

Rules of necessary application in this context is just the 'Business Police Rules', not all other kinds of rules of necessary application. Rules of necessary application are like any necessary rules. They are all aim at achieving national interests. The jurisprudence differed regarding the extent of these rules' application outside the region of the country that legislated them on the basis that the national judge only protects the national interest of his country and has nothing to do with the foreign interests of another country. This is led to a difference of views especially in the scope of the work contract executed outside the region of the judge's state. Work performed in the judge's country does not create any challenge because the judge applies the national law to the work contract in dispute. This application is comprehensive for both complementary and imperative rules. The basis of this application - especially on the organizational side of the contract - is related to the fact that governing rules regulating this contract are among the rules of direct application that determine their spatial scope. Therefore, they apply to all work relations that are carried out in the state of the judge without the need to include these relationships in a specific predicate idea in preparation for their attribution to the law of the place of execution. The current study investigates the problem of applying rules of necessary application in regard of international work contract. The research question is "to what extent do rules of necessary application and foreign rules of general law govern the provision of the multiple issues within the scope of this contract?", since work relations are tightly connected to the organizing rules and provisions.

Furthermore, whatever the basis on which the judge's law is applied; the execution of work in the country of the judge necessarily entails the association of the legislative and judicial competencies. Accordingly, this imposition arises in connection with the international work contract executed outside the region of the country of the judge. Jurisprudence did not agree on the issue of the ability of the national judge to apply the foreign necessary application rules prevailing in the country of execution of the work, which requires examining this problem to clarify the preponderant opinion about it. This will be discussed in three sections as follows:

1- International Work Contract Definition
2- Rules of the Necessary International Application to the International Contract According to the Rules of Attribution
3- Foreign Necessary Application Rules that are not Part of the Law Applicable to the International Contract

International Work Contract Definition

Discussing any topic in the context of conflict of laws requires sufficient knowledge of the topic itself before entering into a solution to the dispute. The focus of the current study is the application of 'rules of necessary application' on the international work contract. Thus, it is necessary to define international work contract to conclude the best resolution to the dispute resulting from it. Since contracts are divided into national and international ones, then international work contract is of great importance. When a national judge is presented with a dispute related to a specific contract, he analyzes the nature of the contract to see if it is a national or international one in preparation for determining the law applicable to it (Alqushairi, 1968). If the contract is proved to be internal, the judge will apply the substantive rules in its law. In contrast, if the contract is proved to be international, then the law referred to by the competent authority of reference will be applied in his national law (Salama, 1985). The work contract may get the international character if it resembles a foreign element, which makes it an international contract. Therefore, this issue had to be clarified due to its importance because international contract is a preliminary issue necessary for the application of conflict of laws rules within the scope of private international law (Sadiq, 1995). Accordingly, we will present the definition of the work contract first then its legal nature in order to determine the criteria for defining the international character of work contracts.

Definition of Internal Work Contract

To determine the nature of international work contract we should highlight the definition of internal kind of this contract. The term work, linguistically, means "human effort of whatever kind, muscular or mental, technical or administrative, and whether it requires special skill or not." Work means an act (Mar'ashli & Mar'ashli, 1974). Internal work contract is "An agreement between two parties whereby each of them is obligated to implement what they have agreed upon. A work contract is a contract under which a person commits to work in the service of another person in return for a wage." (Anees, Muntasir, Alsawalhi & Khalaf, 1996). The term 'work contract' refers to the individual work contract aside from group or shared work contracts. A group contract is an agreement between one or more workers' organizations and one or more employers to regulate the conditions of work (Al'abid & Ilias, 1989). Act 900 of the Iraqi Civil Law No. 40 of 1951 defines the work contract as "A contract by which one of the two parties pledges to allocate his work to the service of the other party and to perform it under its direction and management in return for a wage pledged by the other party. The worker is a private wage earner." It is clear from this text that a work contract in Iraqi civil law includes three main elements (There is an aspect of jurisdiction that adds a fourth element to the work contract, which is the element of time) (Alquraishi, 1969). The three elements are work - subject of worker's commitment (Act 1, Article 6 of the Iraqi Work Law (1) No.37 of 2015) and the reason for the employer's commitment (Act 1, Article 8 of the Iraqi Law in action), wage -

subject of the employer's commitment and the reason for the worker's commitment, and dependency - the worker is subject to the management and supervision of the employer. Furthermore, Act 1, Article 9 of the Iraqi Work Law No 37 of 2015 defined work contract as " any agreement, whether explicit or implicit, verbally or in writing, whereby the worker performs the work or provides a service under the management and supervision of the employer in exchange for a wage of any kind. " It is clear from this text that the legislator - as is the case in the civil law - has mentioned the element of work, dependency, and wage, but he neglected the term 'private wage earner' related to the worker. It seems that this negligence is intended for its own sake since it agrees with what the jurisprudence holds, that it is not necessary for the work contract to be established on the fact that the worker should work for one employer only, but rather he may conclude more than one contract with multiple employers and not to work under it all the time. Thus, work contracts can be multiplied whenever the elements of a work contract are available. This does not deviate from the definitions stated in the comparative legislations. Article 674 of the Egyptian Civil Code defines a work contract as "the contract in which one of the contracting parties undertakes to work in the service of the other contractor, under his management and supervision, in return for a wage pledged by the other contractor". Article 42 of the Unified Egyptian Work Law No. 12 of 2003 also defined it as "The contract whereby a worker undertakes to work for the employer, under his management or supervision, in return for a wage." In French law, the legislator has left the task of defining the work contract for jurisprudence and the judiciary because neither civil law nor work law has any definition of a work contract. Part of the French jurisdiction defined a work contract as "The agreement under which a person - the worker - is obligated to place his activity at the disposal and direction of another person - the employer - in exchange for a sum of money." They indicated that there are three elements of a work contract that can be inferred from this definition: human work, human work in return for a sum of money, and supervision and submission (Camerlynck, 1968; Malezieux, 1963).

We can deduce that work contract in Iraqi legislation is considered a private law contract in origin, but it has a special characteristic that distinguishes it since it requires a person to be subject to the supervision and direction of another person. This characteristic makes it somewhat similar to the administrative contract according to which a person works for the account of the administration and under its supervision and direction. Accordingly, the work contract is a contract like all other contracts, and it is not executed without the consent of two wills and their convergence on the elements of that contract. For the validity of this agreement, its pillars must be met. These pillars are satisfaction, location, and reason (Mansour, 1971), subject to the peremptory provisions stipulated in both work law and the civil law. It is noteworthy in this regard that both the provisions of the civil law and the articles of the work law regulate the work contract. However, when there is a conflict in a specific text between them, then the work law is the one that must be applied since it is considered a special law in relation to the civil law, which represents the general jurisdiction of law.

The Legal Nature of the Work Contract

Specifying the nature of the substantive legal rules governing relations with a foreign component has its effect in the field of conflict of laws that falls under the subject of private international law. The application of the principle of the authority of the will is affected by the nature of the rules governing the legal actions to be applied within its scope since the application of this principle is limited to the scope of private law contracts. However, contracts subject to public law or peremptory regulatory rules are applied as 'other rules'.

There are several opinions regarding the nature of work law. The work contract is one of the contracts named in the civil law, but the legislator has devoted to this contract a special law that includes certain conditions to protect the weak party in the relationship, which is the

worker. Thus, work law emerged as a separate branch or as a special law in relation to civil law. Accordingly, three trends emerged in this regard as follows:

1. The first trend considered work law as a public law. Supporters of this view rely on the fact that the criterion for the distinction between private law and public law is based on the nature of the interests protected by the legal base. Public law is the law over which the public interest prevails. On the other hand, private law is the law in which the individual interest emerges. Since public law aims to achieve the public interest, so they consider it as a public law. The development of the work law has led to the penetration of the provisions of the general law with an increase in its regulations until it got an organizational character. The civil service system, the system of public service concession contracts, public works contracts, and the state's introduction of conditions in favor of the procedure had an effect on organizing the provisions of the work contract. It should be noted that the Iraqi legislator has considered work law as one of the branches of public law (Mansour, 1971). As a result of the increasing state interference in labor affairs, especially after the decline of free capitalism and the birth of restricted capitalism, this resulted in the tyranny of the legislative rules in work law and the expansion of its content (Rivero, 1975). Moreover, it led to the independence of work law from civil law to become a branch of public law because, as the proponents of this trend see, the private law is the law of freedom, choice, and the authority of the will; while public law is the law of command and control. It is taken against this opinion that it ignored the basic criteria for the distinction between public law and private law, which entails that one of the parties is a public person, or that the state is the subject of legal rules that belong to the community of public law. Since work law does not regulate the work of the public authority, and the contracts subject to its provisions are not concluded between parties including a public authority, then this contract is done between individuals (the worker and the employer). Thus, work law is not considered a public law even if some of its rules are commanding. Concerning the standard adopted by the proponents of this trend, it is considered imprecise because it leads to confusion between public and private laws and blurs the boundaries between them. Rules of work law govern the existing labor relations between workers and employers. These relations are private in nature and have nothing to do with the organization of the public authority or the sovereignty of the state. As a result, the attention has turned to considering work law as a special law.
2. The second trend considered work law as a private law (Sadiq, 1982) because it mainly governs the special ties and relationships between workers and employers. Its predominant rules have nothing to do with public law. In spite of the interference of the legislator in many work regulations of commanding nature - which led to the limitation of the principle of the authority of the will in establishing the contractual relationship and arranging its effects - work contract nevertheless is still the predominant source of individual work relations. Work law usually includes rules governing an individual employment contract and labor regulations. The latter applies to all labor relations, whether they arise from a valid or invalid work contract. However, work contract is still - even after the legislator's interference in its regulation - a consensual binding contract for both sides, and subject to public principles in contract theory. Which is why the legal rules that regulate it are closer to private law than to public law. Followers of this trend affirm that the state's interference in the legislation of the rules enacting the organization of work affairs does not affect the nature of this law because legislative interference in private relations has become a feature of the present time (Sadiq, 1982). Therefore, work law falls within the spectrum of special laws. At the same time, it includes peremptory rules whereby the public authority interferes in the work ties and relations such as fixing wages, work duration, and so on. It is taken against this trend that the mandate for determining whether a particular law belongs to public or private law is not the nature of each of the law's rules; otherwise most of the laws will end up becoming mixed laws. It is rather the nature of the basic rules included in the law without being affected by the nature of some of its supplementary rules. It is taken against this view that the mandate for determining the affiliation of a particular law to public or private law is not by the nature of each of its rules, otherwise most of the laws will end up becoming mixed laws. The mandate is rather in the nature of the basic rules included in the law without any impact of the different nature of the supplementary rules. It can be said that work law has a specific nature but it is regulated by legal regulatory rules of the common law. Likewise, the common law systems of work affairs represent the exception, and the original keeps its association with the private law. In fact, if the work law had taken some of its rules from private law and some others from public law, then it is today independent from private and public law, which led some to say that the work law has weakened the traditional foundations for dividing the law into public and special (Alquraishi, 1969; Mansour, 1971). This led to the emergence of a third trend to determine the nature of the work law.
3. Third trend: Mixing public and private law (social law). Supporters of this view argue that work law is an independent law that occupies a special place between economic sciences, because it contains peremptory legal rules that are not permissible to violate (such as determining wages, working hours, etc.), and on rules of the private law that include the provisions of a work contract. On the other hand, it is related to the social economy which examines the state's interference in the regulation of industrial relations and the effects of this intervention on economic and social planning (Szaszy, 1968). Although it took some of its rules from the private law and public law, work law is not considered to be composed of contradictory rules. It mixed these

rules together to be an independent law. It has its goals and directions that are separate from the trends and objectives of both public and private law which is called social law. A social law means the set of rules that aim to regulate economic and professional life (*i.e.*, industry, commerce, and work). The advantage of this law is that it is a newly established and has a social and solidarity nature (Mansour, 1971). This section of the law includes branches that deviate from the civil law by special rules. The state's role in regulating the legal relations of individuals is clearly evident such as regulating work laws, social security, cooperation, and agrarian reform. It seems that the preponderant jurisprudence in countries that rely on the division of laws into general and private has settled at the present time on considering the labor law as a stand-alone law, independent of the public and private laws, and that it is a law that has special features and characteristics that are not related to any other law.

The International Character of Work Contracts

Due to the lack of a unified idea as a basis that can give the contract the international character, several standards have been developed to define the internationality of the contract. We will refer briefly to each of these criteria, and then we will conclude with the selection of the criterion that is compatible with the work contract in question.

Criteria of the Internationality of the Contract

There are three criteria for the international contract. One of them is the legal – traditional – criterion according to which the contract is considered international if its legal elements relate to more than one legal system. In other words, the elements of the contract are distributed in several countries. The elements of the contract's connection to the legal systems may be personal such as the nationality of the contractors and their place of residence, and they may be objective such as the place where the contract is concluded or the place of its execution (Mansour & Abdul 'Aal, 1995; Yaqout, 2000). Another criterion is the economic one, which deals with the internationality of the contract when the latter is connected to the international trade interests and exportation and importation of the economic means. This criterion led to the transmission of goods and services across boarders since its effects are not limited to the national market (Sargees, 1984). The last criteria is the double standard one that combines the two previous criteria. According to this double standard criterion, the contract is considered international if it includes a foreign element and is related at the same time to international trade interests (Delaume, 1979).

It seems that the prevailing jurisprudence (Nassbaum, 1933; Batiffol, 1983; Niboyet, 1948) tends to adopt the modern legal standard according to which the contract is considered international whenever the foreign character refers to the influential elements in the contract without the negative or neutral elements in it. The lesson in this regard is not the numerical quantity of the foreign elements in the contractual association, but rather the value of each of them and the extent of its influence (qualitatively) on the nature of this bond so that it can be described as international. It is clear that the modern legal standard has become the most correct in determining the international character of the contractual association. This requires us to differentiate accordingly between the influencing elements and the non-influencing elements in this contract. So if the foreign character refers to the influencing elements, the contract is considered international. However, if this characteristic deals with the negative elements, the contract does not acquire the description of internationalism but rather remains an internal contract.

Influencing Elements in the International Labor Contract

Determining the elements that affect the internationalization of the work contract requires analyzing the elements that are included in the formation of this contract in order to determine their nature and the extent of the influence of the foreign element on them. Accordingly, we will divide these elements into personal and objective elements.

Personal Elements

The personal elements of a work contract are embodied in both nationality, which is every regulatory legal association binds a person to a state (Alhadawi & Aldawoodi, 1988), and domicile, which is the place or shelter that a person takes as a center for his business, interests, and family connections, so that if he is absent he does not intend to leave it (Pierre Louis-Lucas, 1962). Concerning these two elements, they do not affect the internationalization of work contract. The issue of the nationality of the parties or their domicile in the field of international contracts is nothing but an element of the subordinate attribution which is not the original. These two elements - nationality and domicile - are rarely used in a work contract. Moreover, they are considered ineffective in all international contracts too (Pierre, 1962).

The Objective Elements

The objective elements are represented in each of the place of conclusion, place of execution, and the center of business administration. The importance of each element differs from the other as we will see. Regarding the place of conclusion, it is considered a minor element in the work contract since the conclusion of the contract in a foreign country may be an accident or coincidence, and the place of conclusion has nothing to do with the essence of the transaction. For instance, the employer concludes a contract with the worker in a foreign country while they are accidentally staying there. Then they return to their country to implement the contract. Here, the contract is internal because the foreign characteristic in it, represented by the place of conclusion, is considered ineffective in such a contract. According to the correct jurisprudence (Toubian, 1973), the other element - represented by the place of implementation - is one of the influential and effective elements in giving an international character to the work contract. This is due to several reasons. The first is that the place of execution is the place or space in which peremptory rules relating to public order are applied within the scope of the work law. There are many texts in the Iraqi Work Law that consider it as a public order as not permissible to agree on anything that contradicts it in the aspects of rights, obligations, minimum wages and work hours. The judge who hears the dispute in a country other than the country of enforcement cannot consider such a contract as internal since the contracting parties are of one nationality or one domicile. As long as the implementation is in a foreign country, the contract is considered international and not internal whatever the contract's other elements are concentrated in a particular country. Second, the law of the country of implementation is the law most closely related to the work contract (Schintzer, 1968). The worker's home and activity is concentrated in this context. Furthermore, the employer is often present in this place to monitor the correct implementation of the work. Third, the subject of implementation is one of the decisive and influential elements in the internationalization of the contract, not only within the scope of the work contract but also in all financial transactions and commercial exchange contracts. For these reasons, the subject of implementation was considered one of the influencing and decisive elements in the internationalization of the work contract. In implementation of this, the Paris Court of Appeal ruled on 5/3/1965 that the work contract - the subject of the lawsuit - executed in Guinea is an international contract. Therefore it is subject to the rules of conflict of laws because the place of execution is located in a foreign country which is Guinea (Rev, 1965). The third element, represented by the business administration center, may also be considered one of the factors affecting the internationalization of the work contract suggesting that there are many places of implementation for work of a company or project whose head office is located in a foreign country. This center is in such a case an effective and influential element in imparting an international character to the contract, considering that the work performed in more than one place outside the jurisdiction of the country in which the project management center is located is an extension of the activity of the latter since it is the true center for all work relations related to this project. The two elements of the place of

execution, *i.e.,* when the work is carried out in one country, and the center of business administration, *i.e.,* when the work is carried out in several countries, are the two elements that affect the internationalization of the work contract.

International Work Contract in Iraqi Law

The Iraqi civil law did not refer to the definition of an international work contract, nor did it address a statement of the standard that must be followed regarding defining the international character of a work contract. All that was mentioned about the work contract was mentioned in Acts 900 - 925 of the Civil Code and in the Work Law. The Iraqi legislator did not address the issue of the international contract, so it was necessary to refer to the texts of conflict contained in the civil law (Acts 17-33), which is also neglected, and this indicates that the Iraqi legislator has left the matter to jurisprudence and the judiciary. The Iraqi judiciary's position has been hesitant regarding defining the international contract standard. Sometimes it refers to the combination of the two legal and economic criteria. At other times the legal standard is used only to give the contract an international character (Judicial Rulings Group, 1977; Suhail, 1962)

If we want to define the international character of a work contract according to Iraqi law then we can do that according to Act 30 of the Civil Law that "Regarding conflict of laws, situations not mentioned in the previous articles follow the most common principles of private international law." The most common principles in private international law in determining the internationalization of the work contract is that the foreign character refers to the element of the place of execution when the work is carried out in one country, or to the element of the business administration center when the work is carried out in more than one country. Therefore, the work contract is considered international - according to the Iraqi law - if the foreign character refers to one of these elements.

After defining the international character of the work contract we will discuss the problem of the law applicable to this contract because of its association with more than one law.

Rules of the Necessary International Application to the International Contract According to the Rules of Attribution

The law applicable to the international work contract is the law of execution. If a dispute is presented to the national judge related to a work contract executed outside his region and the rules of attribution in his law refer to the application of the law of the place of execution then the question arises about the extent of the judge's ability to apply the foreign necessary application laws prevailing in the place of execution of the work. The jurisprudence do not agree about the permissibility of a national judge to apply foreign laws of necessary application that are relevant according to the rules of chain of transmission in his law. As a result, divergent trends emerged in this regard.

The Traditional (Abstaining) Trend

Supporters of this trend think that it is not permissible to apply the necessary application laws and foreign common law rules by a national judge to work contracts executed outside his region (Fedozzr, 1929: p.9) even if they belong to the law of the rules of attribution. There are many reasons behind that. Sometimes they rely on a regional idea which means that the law must govern all persons and things that exist on the territory of the state and all the facts and actions that take place in it. In other words, the idea of regionalism makes the borders of each state a barrier from which foreign laws are not implemented. At other times they follow political laws because these laws cannot find a way to be applied outside the territory of the country that issued them. The centers that are subject to the rules of necessary application - according to this trend - do not raise a conflict between the laws, but rather only raise the problem of applying

these laws in terms of place since these rules were originally intended to protect the legal system of the state of the judge. Therefore, the rules of necessary application cannot find application abroad because their purpose is to achieve the national interest and not the interest of international relations according to the idea of political laws. The proponents of this trend of refusing to implement foreign laws with necessary application cannot be taken for granted. The first argument on which this opinion was based, represented by the territoriality of the legal rules, is of no use in this context since the territoriality of the law is intended to apply the state's law to all the facts and actions that take place in it. This does not, of course, prevent the foreign judge from applying regional law to the incidents that occurred in that region. To say otherwise means the elimination of the spirit of cooperation and coexistence between the different legal systems, which is inconsistent with the basic objective of private international law. As for describing the rules of the necessary application of political laws, they cannot be taken for granted because the practical reality did not prove the existence of such legal rules, and because taking the interest of the state as a criterion to distinguish these rules from other legal rules is a general and unspecified standard.

The Second (Legal) Trend

This trend argues that the necessary application laws and foreign common law rules should be taken into consideration without reaching the limit of actual application. In other words, the national judge shall consult the foreign rule to ascertain the conditions of its applicability to the disputed incident. If this is confirmed, he shall apply the provision stipulated in his national law without the provision stated in the foreign rule (Graveson, 1974: p.178-179). This trend is supports the judge’s view by saying that most of the national legislation and the convention that referred to the application of foreign necessary application rules have used flexible and unclear terms, as is the case in Act 7/P1 of the Rome Convention of 1980 and Act 19 of the Swiss Special International Law of 1987. Which means not to be certain or obliged to apply these rules, but rather to take them into account.

The idea of taking these rules into consideration has been criticized because it strips the legal rule of the status of compulsion merely because it belongs to a foreign law. This is, of course, inconsistent with the basic characteristics of the legal rule. The application of the foreign rule by a national judge is not based on the order of the foreign legislator, but based on the order of the attribution rule in his national law which authorized the foreign rule to have jurisdiction in resolving the dispute and thus give it the status of compulsion.

The Third Trend (The Idea of Attribution)

It refers to the necessity to apply the necessary application rules and foreign general law legislation when the attribution rules in the judge’s law refer to the application of that law. That is, the application of the provisions of the foreign law with all its complementary and decree rules based on the idea of the total attribution of the relevant law. This new trend relies in applying these rules to the idea of total attribution to the foreign law. The idea of total attribution means the application of the relevant foreign law under the rules of attribution whether relating to the laws of necessary application and rules of general law or in its substantive rules (Hussein, 1996). Mayer (1981) states that the idea of the total attribution of the relevant law finds its basis in that when the rules of attribution refer to the competence of a specific law to rule the dispute, they do not differentiate between its rules that belong to private law and its rules that belong to public law. Because the task of determining the internal rule that must be applied and excluding other rules that are not applicable are among the matters specified by that foreign law itself. Therefore, if the judge applies the rules of the private law in the relevant law without the rules of necessary application then this is a distortion in the

application of this law. Consequently, the judge would have thus violated the base of attribution in his national law.

It should be noted that the International Law Academy in its session in 1975 in Wiesbaden adopted the idea of total attribution in the first article of the decision it made. It affirmed that "the general characteristic of one of the texts of foreign law designated by the attribution rule does not constitute an obstacle to the application of this text with the main reservation of the public order" (Sadiq, 1995). The Rome Convention of 1980 adopted on the law applicable to contractual obligations was taken into account in Act 7 P1 which states: "When applying the law of a particular country, according to the current agreement, it can give effect to the stipulations in the law of another country with which the relationship maintains a close bond if these texts, according to the law of this last country, are applicable regardless of the law governing the contract." The affiliation of the competent foreign base to the necessary application rules or the general law legislation is not an obstacle to the implementation of this law. However, the matter applies if these rules do not belong to the law applicable to the relationship. This raises another problem that we must address in the following section.

Foreign Necessary Application Rules that are not Part of the Law Applicable to the International Contract

The application of foreign work laws with the necessary application is based on the idea of total attribution if these rules belong to the relevant law by virtue of the contract. However, this is not the case if these rules do not form part of the law applicable to the contract. This occurs when the attribution rule in the law of the judge indicates the application of the law of the country of enforcement to the work contract and the contract is closely related to the law of another country. Or if the base of attribution in the judge's law refers - in some assumptions - to the jurisdiction of the law of will or any other law that may be related to the work contract in one way or another instead of the law of the place of execution. The contract is at the same time closely related to the prevailing rules and the prevailing foreign necessary application laws in the country where the work is carried out. Thus, two judiciary trends appeared.

The Trend of Rejecting the Application

Part of the jurisprudence (Francescakis, 1996) went to the non-obligation of the judge to apply foreign laws of necessary application that do not form part of the relevant law, given that these rules are not relevant to the ruling of the dispute because they do not belong to the judge's law nor to any other legal system that is pertinent to the rules of attribution in the state of the judge. Moreover, the application of these rules will be considered as subordinating to the national judge to the will of the foreign legislator because the application of foreign law is not based on a national base of attribution. This means adopting the absolute monistic doctrine - which is based on respect for foreign sovereignty - a doctrine that has been abandoned by jurisprudence because it does not respond to the prevailing positivistic facts.

The Supportive Trend

According to this trend, the judge should apply foreign necessary application laws even if they do not belong to the relevant law according to the rules of attribution in the state of the judge, even though it does not belong to the contract law, if there is a serious and real connection between the contract and those rules (Sadi, 1995) considering that this solution guarantees the unity of legal solutions which is one of the basic goals pursued by private international law especially within the scope of work contracts. Moreover, it realistically guarantees the implementation of judicial decisions issued outside the country of execution of the judgment.

The Hague Convention of 1978 Concerning the Law Applicable to Mediation and Commercial Representation Contracts adopted this trend in Act 16 which states: "Upon the implementation of the present agreement, a trace may be given to the imperative texts of each country with which the relationship maintains a serious bond, if these texts are in accordance with the law of that state, and are applicable, regardless of the law specified by the attribution rules in it." Furthermore, Rome Convention of 1980 adopted this trend in Act 7/ P1 stated earlier. The proponents of this trend, although they had agreed in terms of the conclusion they reached - which is the necessity to apply the foreign rules of necessary application whenever they are seriously related to the conflict - they have differed in the means through which this application is carried out, which led to the emergence of two approaches in this regard.

1- Application of Double Support Base: This approach aims at the necessity of applying foreign necessary application rules that do not form part of the relevant law through the double interpretation of the criteria for the applicability of their counterparts in the law of the judge. In other means, the national judge must use the criteria for the applicability of the national necessary application laws to determine the similar foreign rules applicable to the work contract in dispute through the dual application of these standards. Accordingly, the followers of this opinion propose (Toubiana, 1972) to create a special (double) attribution base to enable the necessary application rules to be specified in the judge's law. This double reference rule is based on controls similar to those underpinning the normal reference rules. These controls may be personal, such as the nationality or domicile of the worker, and they may be regional, such as the place of implementation of the work or the location of the project management. If one of these controls is available in favor of the judge's law then the judge directly applies the necessary national application rules even if they are not competent to rule the contract according to the traditional base of reference in his law. The same applies to foreign rules of necessary application. In other means, The controls of attribution that determine the necessary national rules of application in the state of the judge can be used as a basis for defining similar rules in foreign law, since these special (or exceptional) rules in the judge's law are in fact a single-sided attribution rule that is subject to duplication. This is the reason behind the naming of the rules of attribution as double or special because it is interpreted as having two sides in the application according to the existence of the link between the presented dispute and those rules, whether in the law of the judge or in foreign law. We believe that the basis for this trend is fundamentally wrong. This approach assumes that foreign rules of necessary application have a similar scope of application to the national rules of the same type, *i.e.,* they are identical with them in terms of content. This cannot be taken absolutely for granted because the congruence between the laws of two countries in terms of content does not necessarily mean that they are identical in terms of the goal that the legislator aims at in each of them. The formal correspondence between the texts does not mean that they are identical either in terms of meaning.
2- Application of special reference base: supporters of this opinion agree with the previous approach regarding the necessity of applying the rules of the foreign necessary application in question, but they differ in terms of the means through which this application is carried out. The opinion in question stems from a basic idea that no law may be applied contrary to the will of the legislator. In other words, the competent judge who examines the dispute applies the rules of foreign necessary application that enter the disputed facts within the scope of their application as determined by the legislator of these facts on the basis that these rules were established only to achieve social and economic goals in the state of the foreign legislator who set it up. Consequently, it is not conceivable to apply them in cases other than those specified by that legislator. This is called the monistic approach in the rules of attribution (Sadiq, 1995). However, the monism referred to by this opinion differs from the absolute monism, because the application of the foreign necessary application rules is not based solely on the will of the foreign legislator in this application, but rather is based on the will of the national judge's legislator in determining the scope of application of these rules and on the judge's discretionary authority in this application through his conviction of the availability of a serious and real link between the content and objectives of these rules and the scope of their application as defined by the foreign legislator who set it up. We believe that this trend has avoided the criticism directed at the followers of the previous approach because it is based on a sound basis since it does not apply a law contrary to the will of the legislator. However, this trend is not without drawbacks because respecting this will of application may make the judge face more than one rule of necessary application each of which belongs to a different legal system to apply to the contract in dispute. This is called positive conflict of the rules of necessary application. There is a negative conflict that may arise between the rules of the necessary application. This occurs when all the laws of necessary application abandon the provision of a particular issue and refuse to apply to it. In such a case, one should refer to the law of the contract itself, *i.e.,* the law for which the rules of attribution indicate its jurisdiction as it relates to the dispute. However, supporters of this approach have avoided this criticism by finding appropriate solutions to confront these assumptions. If there is a conflict between the laws of necessary application and the judge's law is among those laws, then there is no difficulty in such an imposition as the judge applies the rules of necessary application stipulated

in his law. Other foreign necessary application rules are not considered because it is the duty of the national judge to protect the interests of his country if it conflicts with the interests of other foreign countries. Therefore, the application of the law of the state in which the judgment is executed is consistent with the criterion of effectiveness and with the principle of enforceability in international jurisdiction (Sadiq, 1972). Not to mention that the execution of the judgment usually takes place in the country of execution of the work which leads to standardization of solutions Applicable to employment contracts. Thus, the supporters of the methodology of the one-sided chain of transmission was able to respond to the criticism directed at them, and their approach became the most preferable one. It is noteworthy in this regard that the 1980 Rome Agreement did not address the setting of special provisions to resolve the conflict between the rules of foreign necessary application. However, Act 7/1 of this agreement referred to general guidelines that the judge could take into consideration in order to favor one of the foreign rules over the other as his regard for the nature of the rule, its subject matter, and the consequences thereof.

CONCLUSION

In the current study, we concluded the following results and recommendations:

Results

1- The Iraqi legislator did not clarify the provisions of the international labor contract which led us to apply Act 30 of the Civil Law, which refers to following the principles of private international law that are most common when the legislation neglects indicating the solution that should be followed. Which means applying the law of the place of execution to this type of contract.
2- When the judge applies the rules of foreign necessary application - whether they belong to the relevant law or not, he checks that these rules do not conflict with the public order prevailing in his country. If there is a conflict, the judge refuses to apply the foreign necessary application rule. Instead, he applies the national necessary application rule based on the idea that the general system is best for the worker.
3- The mere difference in the provisions of foreign law from the provisions of national law, or the mere preference between them and the fact that the foreign legal base is more useful does not necessarily mean raising the idea of public order in the law of the judge because the simple difference between legal systems, which does not reach the prejudice to the fundamental foundations on which the system of society is based, is not sufficient by itself to exclude the application of a specialized foreign law. There is a degree of tolerance among legislations subject to the judge’s discretion to coexist with each other despite their different rulings.
4- If the necessary and contested application rules all belong to countries foreign to the judge's country it is necessary to apply the necessary application rule that belongs to the state whose courts could have jurisdiction to adjudicate in the dispute if this dispute had not been brought before the judge who is now looking into the case on the basis that the jurisdiction of the courts of this country in the dispute necessarily means that the work contract is bound to it.
5- The application of the law of the country in which the judgment will be executed is the most correct one. This is based on several considerations, the most important of which is that this state has a serious and real interest in implementing its law, considering that the ruling without implementation is devoid of its actual value. This is because the implementation requires the intervention of public authority employees in the state, and these - of course - are subject only to the orders of its legislator.

RECOMMENDATIONS

1- Act 6 of the Rome Convention of 1980 notes that the last paragraph related to the application of the law most closely related to the contract represents a development in this field since it enables the judge to reveal the law that has the right to rule the dispute, away from stagnation or adherence to the law of a particular country. It gives the possibility of applying the law of any other country if the international work contract is closely related to the law of that country.
2- The Iraqi Work Law No.37 of 2015, which regulates the employment of foreign workers, did not refer to the legal rules governing the international work contract and its provisions. Therefore, we call on the Iraqi legislator to include a text that addresses this issue since the international work contract is the one in which conflict of laws is raised.
3- The research has shown that the national judge has the right to apply the laws of necessary application and foreign common law rules if they are seriously related to the work contract in dispute, based on the idea of total attribution at times or on the approach of the single-aspect attribution rule that is based on the application of the rules of application. The foreign necessity is based on the desire of its legislator to apply at other times. Thus, we claim that the formation of the international work contract, its effects, and its termination be subject to the law of the place of work execution.

4- If the work is carried out in more than one place, then the contract is subject to the law of the country in which the business administration center is located. If there is a multiplicity of this center, the law of the country which is more related to the contract will be applied. Furthermore, if the work is carried out in a place that is not subject to the sovereignty of a state, then the contract is subject to the law, which is more valid for the worker on all the elements of the relationship.
5- If the parties agree to apply a law that is more favorable to the worker than the law originally concerned with the ruling of the dispute, then the selected law will be applied to the contract. An international labor contract is considered valid in terms of form if it was contracted according to the form established in the law of the country in which it took place and if it was not contrary to the international and national public order of the parties to the contract, or if the forms determined by the law governing the subject are taken into account.

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