

EXAMINING THE FINANCIAL RIGHTS OF FOREIGN NATIONALS IN THE DOMESTIC LAW OF THE ISLAMIC REPUBLIC OF IRAN AND INTERNATIONAL CONVENTIONS

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ABSTRACT

What is important in this article is to identify the financial rights of foreign nationals. How and on what basis should we grant these rights to foreigners and what are the conditions for foreigners to enjoy them. If a foreigner makes a deal in Iran or in any other country, for example, what are its rules and regulations? In this article, we discuss the financial rights of foreign nationals in Iranian domestic law and international conventions. We want to know who foreign nationals in domestic are and international law and what are their rights? In particular, what are their financial rights and what are the conditions for them to enjoy these rights? And let's examine each of these in Iranian domestic law and international conventions to finally reach conclusions that will help us better understand the issues of relations between governments. Knowing their rights in the Islamic Republic of Iran, foreign nationals will be able to do business and live in this country with more awareness and confidence.

Keywords: *Citizenship, Foreign nationals, Financial law, Islamic Republic of Iran*

INTRODUCTION

In the current era of the legislature of each country, in addition to establishing the rules governing the legal relations of the citizens of that country with each other or the government, the regulation of the rules governing relations with foreign nationals in its territory on the one hand right and on the other its duty Counts. The rules thus laid down by the legislators of each country about aliens are general, meaning that they apply to all aliens. In addition to these rules, there are other rules that only apply to a group of aliens, such as rules that states accept in each other's treaties in favor of each other's citizens and commit to enforcing them. By enacting these rules, the government shows that it recognizes legal personality for foreigners in its territory and recognizes them as entitled to rights. This arrangement is useful in terms of internal order and is in line with the requirements of the International Order of Conformity and Article 6 of the Universal Declaration of Human Rights, which states: "Everyone has the right to respect for his legal personality everywhere". However, governments do not have to equate the rights of foreigners with the rights of their own citizens. If a brief comparison is made between the rights of citizens and foreigners in different countries, it can be seen that if the rights of these two groups of people are the same in some cases, they are different in other cases and the rights of foreigners are more limited than the rights of citizens; In some cases, they are even deprived of some rights due to being alienated. In Iran, there are various provisions of the law on the situation of foreigners. These regulations are of two types: a set of regulations in which the conditions for a foreigner to come to Iran and his residence and work in this land and his departure from the country are determined. These regulations are administrative regulations and every foreigner in Iran must adapt his situation to them. Another category is the rules that determine the rights of foreigners in Iran. The priority of the first category of regulations over the second category is that the condition for foreign use of some rights in Iran depends on its compliance with the above-mentioned administrative regulations, such as the condition for foreign use of the right to work in Iran is that he has an entry visa. Residence and work permit have been obtained from the relevant Iranian authorities.

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Legal relations of foreigners in Iran have different forms and at different levels. The most prominent of these relations is their relationship with the government. These types of relationships have administrative and formal aspects; That is, relationships that are formed as a result of foreign reference to the competent authorities of Iran to obtain the necessary permits, such as entry visas and work permits in Iran, and lead to the issuance of licenses for them. Another type is their relationship with individuals and persons of private law, ie relations in the field of private law, such as various types of transactions or personal rights, and finally their relationship in the field of public law, such as their right to appeal to Iranian courts to assert their rights or defend a lawsuit. Which has been raised against them.

Foreigners have special conditions regarding financial rights. In Iranian law, there are completely friendly conditions for their transactions and employment. In addition, there are restrictions that in international law, this type of condition is completely natural and normal, and each country in accordance with domestic regulations as well as bilateral and multilateral treaties. The one it establishes with other states accepts and enforces the financial rights of foreigners.

Regarding the acquisition of foreign nationals in Iran, it is done in such ways that preventing the influence of foreign nationals in the territory of the country and controlling the development of their economic activities in terms of buying real estate and the bitter experience of capitulation have become the source of laws in this regard. Foreign nationals approved in June 1961, the regulation on the acquisition of foreign nationals approved in 1962, the approval on the acquisition of foreign nationals approved in October 1963 and the executive regulations of this decree are among the regulations related to this issue. Foreign nationals can also acquire property under treaties ratified by governments. As for government citizens who do not have a contract with Iranians and intend to acquire non-cultivated property, provided that: they have no criminal record and their possession is not contrary to public order and the law and contracts of the Iranian government and has a permanent residence in Iran. If they do not intend to invest in real estate and their intention is only to live or acquire, provided that their respective countries treat Iranian citizens, they can acquire non-agricultural property in accordance with the above conditions. The law on the acquisition of foreign nationals does not allow foreigners to own indefinitely, stating that the purpose of ownership must be for residence, industry or place of business, and also because foreigners may acquire immovable property in Iran only for that purpose. The foreign applicant undertakes that if he / she wishes to transfer his / her permanent residence outside Iran, he / she must transfer the property requested for acquisition to one of the Iranian citizens or foreigners who have acquired the acquisition permit in accordance with the regulations within 6 months from the date of leaving Iran. Otherwise, the relevant registration office, with the permission of the General Registry Office, will sell the property through an auction and pay the amount to the owner after deducting legal fees and charges. Of course, the acquisition of arable property and its functions such as canals, springs, gardens, pastures and the like is generally prohibited for foreign nationals. Also, any Iranian who has acquired foreign citizenship by marriage has the right to own immovable property that leads to foreign economic domination. (Note 2 of Article 987)

In 1963, in order to promote tourism, an alternative law was passed to allow the acquisition of immovable property (residential and commercial places) to persons who regularly travel to Iran for consecutive visits and pilgrimages for several consecutive years. With the approval of the Cabinet, he may, subject to the price of the said transactions, withdraw from the foreign exchange place transferred to the country by one of the authorized banks. Applying for property for embassy premises, consulates and embassy-affiliated institutions is possible through political channels, and the conditions are reciprocal treatment and the approval of the Council of Ministers.

Article 962 of the Civil Code is also one of the innovations of the Iranian legislature in the generalities of the first volume of the Civil Code compared to the introduction of the first volume. According to it, it will be up to each government to determine the eligibility of each person to trade. However, if a foreign

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national in Iran commits a legal act if, according to the law of his or her government, he or she is not qualified or incomplete to perform that act, that person will be considered qualified to perform that act if According to his Iranian citizenship, according to Iranian law, he can be recognized as competent to perform that act. The latter sentence shall not apply to the exercise of rights relating to family rights or inheritance rights or to the transfer of immovable property located outside Iran.

The rights of aliens in international conventions

As mentioned earlier, foreign nationals, if accepted in a country, will inevitably have the minimum rights necessary to enjoy private life. Although the rights of aliens are enshrined in the domestic law of the State of residence, the duty to grant them has been established by international law for States, as exemplified by the Universal Declaration of Human Rights.

The country in which an alien resides must protect his or her life and property at a level that is sufficient to meet minimum international standards and, as far as the security, life and property of individuals are concerned, must be treated with nationals. To consider himself equal before the law. Aliens can exercise their contractual rights and personal status, and international law does not allow any government to deprive foreign nationals of these rights. It is also the duty of every government to treat foreigners in a manner worthy of human dignity.

By referring to international human rights documents, we also see the mentioned rights in the form of various articles. These include the Universal Declaration of Human Rights, the right to life, liberty and security of person (Article 3), freedom from torture or degrading treatment (Article 5), the right to be recognized as a human being before the law (Article 6), the right to equality before the law (Article 7), the right to sue through competent courts (Article 8), release from arbitrary detention or exile (Article 9), the right to a fair and public trial (Article 10), the right to marry and family protection (Article 16) and the right to rest and leisure (Article 24) It is specified that it is related to human beings and, whether they like it or not, it also includes foreign nationals.

The International Covenants on Civil and Political Rights and on economic, social and cultural rights, which are in fact the enforcement mechanism of the provisions of the Universal Declaration of Human Rights, also express the meaning of the provisions of the Declaration in the form of various articles. Articles 6 to 10 of the International Covenant on Civil and Political Rights, relying on the individual's right to life, the right to life, which is in fact the most fundamental human right, and other rights enshrined in international human rights instruments, to the extent that even in Emergency situations can not be violated, it refers to the rights arising from this right, including non-torture, prohibition of inhuman punishments, prohibition of slavery, prohibition of arbitrary detention, and so on. The right to enjoy the services of arbitral tribunals, equality before the law, non-interference with private and family life, etc. are other protected rights covered by Articles 14 to 17 of the Covenant.

In the International Covenant on Economic, Social and Cultural Rights, the first and second paragraphs and Articles 11 and 12 deal with the right to life and related matters, including the recognition of the inherent dignity of all members of the human family. The Islamic Declaration of Human Rights, adopted in 1990, also states these rights in the form of various articles, including Articles 2, 4, 5, 11, 15, 17, 18 and 20. Part of Article 18 of the Declaration states: "A- Everyone has the right to live in peace with respect to life, religion, family, honor and property. B. Every human being has the right to be independent in the affairs of his private life (housing, family, property and communications). "It is not permissible to spy on or monitor him or tarnish his reputation, and he must be protected from any coercive interference." Regional conventions such as the American Convention on Human Rights, adopted in 1969, are also specified in Articles 4, paragraphs 1 and 2 of Article 5, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, in Articles 1 to 4. Therefore, international human rights instruments can all be interpreted at a point where respect for and guarantee of fundamental rights, dignity and human dignity is a concept that requires more precise criteria and clearer principles.

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As noted, foreign nationals are often denied political rights such as voting, holding government office, or engaging in political activities. Resident foreigners are not denied the right to work, but may not be allowed to work in certain occupations, such as crew, senior officer, or merchant ship engineer. Some governments prohibit foreigners from owning or inheriting immovable property or deferring these rights to reciprocity. Many governments also prohibit foreign nationals from registering certain movable property, such as aircraft and ships, in their own name. Another right enjoyed by foreigners is freedom of movement. This means that aliens who are admitted under the law of the country of residence can, in principle, move freely in that country and choose to live wherever they wish, unless the host country allows foreigners to come and go for security reasons. Certain areas are prohibited or subject to the permission of the authorities. Obviously, it is not possible to observe the principle of equality with our own citizens in this case, because in this regard, the considerations of each country in security and economic issues must be respected.

In this regard, in addition to Article 13 of the Universal Declaration of Human Rights, other international human rights instruments also set out rules, including Article 12 of the International Covenant on Civil and Political Rights. This article states: "Whoever is lawfully within the territory of a State shall have the right to freedom of movement and residence within the borders of each State. 2. Everyone is free to leave any country, including his own. 3. The rights set out above "It shall not be subject to any restriction except as provided by law and is necessary for the maintenance of national security, public order, public health or morals, or the rights and freedoms of others, and is compatible with any other right recognized in the present Covenant ..."

The rights of foreign nationals in the Islamic Republic of Iran

A. Under international law, all human beings, including nationals and aliens, enjoy fundamental rights and freedoms for life, and international human rights instruments set minimum standards for a series of fundamental human rights of which aliens are a part. They determine in various dimensions, including political, social, economic, cultural and civil, and accordingly, are the promoters of a common legal standard to respect the dignity and dignity of human beings. The development of these rights by international human rights organizations, led by the United Nations in the form of a comprehensive international treaty, is essential for the wider protection of the rights of aliens. Because, just as other minorities enjoy the support of the international community in the form of special treaties, so do foreigners, as a minority found in large numbers in any national society, deserve such justification. Of course, the absence of such a treaty at present does not constitute a disregard for the rights of aliens in the national territory, but states are obliged to continue to respect their rights in accordance with customary rules, national law and other international instruments, because otherwise the right of the country. Their kind is manifested in the form of political support and may provide the international responsibility of different countries. It goes without saying that foreigners also have duties and responsibilities towards the country of residence, which, if not acted upon, provide grounds for punishment or expulsion. In other words, the rights and duties of the country of residence, foreigners and their respective countries interact with each other, and proper treatment of them is one of the areas that further strengthen the implementation of human rights and thus strengthen global peace and security.

B. The government of residence has broad powers in dealing with foreigners. Therefore, it can prevent foreigners from entering some professions and commercial affairs, unless it has the right to do so under the treaty. The government of residence can deprive them of the right to own or inherit real estate, although it imposes restrictions on them in this regard. The government of residence may also require them to register their names in order to control their activities. If, in the event of a general catastrophe such as a fire or the outbreak of contagious unemployment, certain administrative restrictions are imposed, then in addition to citizens, those restrictions may also be applied to foreigners. There is a difference between resident aliens and ordinary travelers. Resident foreign nationals, with the exception

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of nationals enjoying diplomatic immunity, may not claim exemption from ordinary taxes or customs duties. The government has the right to tax immovable property owned by non-resident foreign nationals in its jurisdiction, and on documents and bonds of resident foreigners.

C. Since criminal laws are territorial laws, there is no difference between foreigners and citizens of a state in the exercise of criminal jurisdiction. A state may prosecute and prosecute foreign nationals for a crime committed against its security and independence, even if the crime was committed outside the territory of that state.

D. The government of residence must respect the freedom, life and property of its citizens. Therefore, from the international point of view, the government has a duty to protect and protect foreigners and should not discriminate between nationals of different states, but is obliged to treat all foreigners in a friendly manner. If the foreign national has fulfilled his / her local obligations and duties such as paying taxes, fines and the like, he / she has the right to leave the country of residence and that country cannot prevent this. Departing foreign nationals should be allowed to take their movable property with them, like domestic nationals, and to transfer immovable property to domestic nationals. Each country is also responsible for acts contrary to the international law of its governing body, the executive, the judiciary and the legislature. Therefore, what harms or damages the foreigner as a result of the act or omission of the mentioned organs causes the responsibility of the said government and the damages must be borne. There may be legislation in the legislature, or there may be a current or current departure in the executive branch that would violate the rights of foreign nationals and result in financial or human losses that the government must bear. Of course, the government of residence cannot be held responsible in all cases of damage to foreigners; For example, when the damage is caused by the provocative behavior of foreigners or when the government of residence has previously warned foreigners to leave the country but the foreigners have not complied.

E. In the international arena, the financial rights of foreign nationals and their conditions are subject to the treaties entered into between States, and the rules governing the reciprocal conduct between States determine their rights and obligations. Likewise, legal persons have the rights and duties that are assigned to individuals by law, except for the rights and duties that are inherently belonging to human beings, such as becoming a father, becoming a spouse, inheriting, etc. For example, a commercial company (a) Like humans, he can have a bank account, but he can not get married, become a father or ...

F. In the case of foreigners, according to Iranian law, whether natural persons (persons who are citizens of foreign countries) or legal persons (foreign institutions and companies), the principle is that they have all the rights provided by Iranian law. Unless the law explicitly deprives them of some of those rights.

G. Cases that foreigners are legally deprived of are: rights that the law explicitly restricts to Iranian nationals or explicitly denies to foreign nationals. To determine what these rights are, you must refer to the law in each case. For example, according to Article 81 of the Constitution, granting concessions to foreigners for establishing companies and institutions in commercial, industrial, agricultural, mining and service affairs is strictly prohibited. Also, in the case of rights that are explicitly limited to Iranian citizens by law and are therefore deprived of them by foreigners, there is the right to work in certain occupations. For example, according to Article 12 of the Law on the Establishment of the Stock Exchange, one of the conditions for admitting natural persons to brokerage is to have Iranian citizenship.

H. Another case is that in addition to farmland, foreigners are deprived of owning other real estate in excess of what they need for their place of residence or business or industry. Therefore, the foreign nationals of the owner in Iran, in real estate, are limited to buying property for their residence or industry or business, while the issuance of a license for this property for foreign nationals and the materials contained in it has its own conditions.

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I. According to the Aliens Acquisition Regulations, a foreigner who wants to buy a property in Iran must obtain a permit from the Iranian government before making a transaction. To obtain and obtain this permit, he must submit his application with the necessary documents to the Real Estate Registry Office at the location of the property. This application and declaration will be reviewed by the Property and Deeds Registration Organization, then the organization's opinion will be communicated to the Ministry of Foreign Affairs. This ministry also expresses its opinion after the necessary and usual investigations and, if necessary, even inquires from the presidency. In the end, after the agreement of the mentioned authorities, foreign nationals will be allowed to make a deal. Of course, it should be borne in mind that this permit is only for the purchase of property for residence or industry or the acquisition of a foreigner himself.

J. In order to obtain the consent of the Government of Iran, a foreign applicant must be qualified under the law of Iran to conduct a transaction. For example, he is not insane, small or stupid. In addition, he must have a permanent residence permit in Iran and undertake to transfer the purchased property to one of the Iranian or foreign nationals authorized by the Iranian government within six months from the date of departure from Iran, if the residence is transferred to another country. Otherwise, the Registry will sell it on his behalf. In the event of the death of a foreigner who has purchased a property in Iran in this way, the registration of the property in the name of his heir in the real estate office is subject to the condition that his heirs have also obtained the necessary permission from the Iranian government.

K. In the personal and private affairs of foreigners in Iran, in matters related to marriage and divorce, if the couple is a citizen of a foreign government, there is no problem and the law of the country governs their relationship. However, if the couple is a citizen of two different countries, the personal and financial relations between them are subject to the laws of the country of which the husband is a citizen. For example, if we want to settle the personal relationship of a Pakistani husband and a French woman in Iran in terms of expenses, alimony or residence, the law of Pakistan will govern the relationship between the two.

L. But if the husband is Iranian, in principle, the laws related to personal status such as marriage, divorce, inheritance, will, etc. apply to all Iranian citizens, even if they live abroad. Therefore, according to Article 963 of the Civil Code, if the spouses are not citizens of one state, the personal and financial relations between them are subject to the state law of which the husband is a citizen. In matters relating to parents and children, the laws of the country to which the father is subject apply unless the child's relationship to the mother is certain and the father is not known, in which case the relationship between the child and the mother is subject to the law The government is the mother.

M. Property left by a foreign deceased, including movable (such as carpet or immovable such as house, land, etc.) located in Iran, in terms of determining the heirs, the amount of their inheritance, how to divide the shares between them and the deceased's will With respect to property, it will be subject to the law of the deceased government. For example, if a Frenchman who has a house, furniture, or cash in a current account in Iran dies in Iran or another country, how is his or her property divided and who is his or her heir or what is the heir's share of the property? ... will be subject to the laws of France.

N. The situation of natural persons in terms of public rights of participation and role of foreigners in the political affairs of the country is exceptional and the principle is their absence and role in these matters, because political rights is a privilege for members of society to participate in elections. Referendum and participation in the administration of the affairs of the country is considered as the exclusive right of Iranians. In addition to depriving foreigners of political rights, these people are also deprived of employment in government institutions, except in special circumstances and with the permission of the legislator. In most employment laws, the condition of Iranian citizenship is considered as one of the main conditions for employment. However, sometimes it is possible that the government is forced to employ foreigners to use their expertise, in which case the approval of the Islamic Consultative

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Assembly is required. After the approval of the parliament, the person must also obtain a work permit from the Ministry of Labor and Social Affairs in order for his / her activity to be considered legal. In addition to government jobs, foreigners are also deprived of employment in some public works such as law attorney and notary public.

O. Foreigners are exempt from public service, but there is no difference between them and domestic citizens in terms of income tax. According to paragraph 4 of Article 1 of the Law on Direct Taxes, every non-Iranian person, whether natural or legal, is liable to pay tax on all income he receives from Iran.

P. A foreigner, like a national, has the right to go to court, and in this case, whether in civil or criminal matters, his application or petition or complaint will be considered. Of course, in civil matters (such as sale, termination of contract, demand for money, etc.), foreigners are limited in terms of filing a lawsuit and the manner of processing, so that if the foreigner is the "original claimant" or enters the main lawsuit as a third party And the other party is Iranian, while the Iranian party seeks to secure his petition, the foreign party, if convicted, must, within a specified time, pay for possible court costs and attorney's fees set by the court. Pay damages so that his claim can be processed and processed. If the foreign applicant refuses to provide security within the deadline, his / her petition will be rejected at the request of the Iranian party.

Q. Regarding Article 962 of the Civil Code of Iran, we must say that this article consists of three parts; The first part indicates the approval of the general rule of conflict of laws reflected in two articles 6 and 7 of the Civil Code adopted in 1307 on competence in a specific field, ie the ability to trade; The second part is exceptional. The first part indicates the applicability of the Iranian law on foreign competence who has performed legal action in Iran and is incompetent according to the law of his country and is qualified according to Iranian law. The third part is an exception to the previous exception in three areas Family law, inheritance law and the transfer of immovable property located outside Iran. Although the provisions of this article are part of the examples of Article 7 of the Civil Code regarding eligibility, it can be said that the rule provided in Article 7 is also except for the exception reflected in the second part of that article and also The rule of Article 966 on the transfer of immovable property located outside Iran remains in force.

SUMMARY AND CONCLUSION

The issue of foreign rights is not new. Throughout history, it has always been discussed in some way and opinions have been expressed about it, and the laws of countries, under the influence of ideas and theories, have considered a special legal status for foreigners. Some thinkers pay attention to human personality and rely on it and give wide rights to foreigners. In contrast, there are theories that value the political sovereignty of any country and say that every country has a political organization and It has an independent sovereignty, and all this sovereignty and independence depends on its citizens, and if a right is meant for a foreigner, it is through compassion.

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