

Individual Residences in Civil Rights of Iran and France

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ABSTRACT

According to the Article 1002 of Iran Civil Code, each person's residence is the important center of his affairs and if it's his residence, then it's his home. In many important affairs such as marriage and mandate solvency, the court needs to determine the residence in order to judicial proceedings. According to the Article 102 of the French Civil Code, each person's residence is his main deployment center. Nobody could have several residences.

In the rights of Iran and France, selecting the residence is free for people unless the cases that court determine the obligated residence. Married woman's residence can be independent from man's residence under the Article 108 of French Civil Code, while in Iran civil code the married women's residence is essentially "the same residence as her husband, unless the woman has chosen a separate residence by court or husband's permission.

According to the Article 107 of France Civil Code, such people like employed employee forever, prosecutors, ministers and stepsons have the legal residence. Also in Iran rights, the government officials' residence is an obligation for both civil and military ones.

KEYWORDS: residence, Iran civil code, France Civil Code, actual person, legal person

INTRODUCTION

The word of residence means the location and living place in the current language. But to authors of the civil code (in Roman – Germanic legal system), the local idea of residence is different from the location. The residence is each person's legal center where the person legally has been established there.

The Article 1002 of Iran Civil Code provides the definition of the residence as: Where he lives or where he does his main affairs. If a person's location is different from the center of his affairs, then his residence is the center of his affairs. The legal person's residence is his operations center.

Everyone's residence is the center of his important affairs, whether or not he lives in there or no. However, a person may live in a place but the center of his residence is elsewhere, in this case, his residence is the center of his important affairs not the place where he's living there. In many cases, the concept of home and residence are not overlapped. However, the new French lawyers tend to bring these two concepts in the legal world.

Benefits of Determining the Residence in French Law

Today one of the most important documents relating to the identity of each person is determined by his residence. In other words, the answer to this question is very important for any person that where the contract in legal proceedings or criminal proceedings can find any place as his residence?

In private law, the significance and status of residence is unknown than the other legal fields. The lawmakers follow the various goals and benefits in determination of residence that it can be briefly noted several cases:

- 1- Many cases of legal actions and events that led to a change the person's status need to determine his residence. Effect of residence can be seen in issues such as weddings, dividing the inheritance (the Article 110 of the French Civil Code), adoption (the Article 3-348 of the French Civil Code), mandate (the Article 393 of the French Civil Code), the order of court based on absentee (the Article 112 and 122 of the French Civil Code).
- 2- In the case of rights of inheritance, the residence has a significant importance. Dividing the inheritance (the Article 110 of the French Civil Code), paying off the deceased's debts (Paragraph 1 of Article 1247 of the France Civil Code), paying operation (Article 111 of the France Civil Code), All appear in place of the deceased's residence.

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- 3- In the case of litigation, qualification of civil courts, notification of sentence, it's necessary to know the residence of plaintiff and invitee. It's based on the court qualification of invitee's residence. The sentences from the court should have the implementing worth.
- 4- In the private international law, the concept of residence has an important topic entitled "connecting age". Legal effects and enforcement of foreigners in Roman, Germanic countries bound up with the concept of residence. Although in Anglo-Saxon countries location has such worth.

The Article 310 of the New Civil Code (France) examines the status of foreigners that are going to divorce on land (territory) of France; this material knows the residence of one part as the enforcement action of divorce. Matrimonial regimes in the other legal systems take it serious.

The main residence of the person is usually fixed, and basically people cannot change it as easy as the location. This invariance is a great advantage to all parties of litigant or contract (because his action center is known).

The Article 102 of the French Civil Code provides that "the residence of each French man in demanding his rights is an important center of his residence." And more residence principles of Article 102 of emphasize "The person, who has the different activities in different locations, does not have different residence but necessarily has just one residence".

The Effects and Benefits of Residence Determination in Iran

- 1- In the official documents it should be clearly mentioned the parties' residence. When they don't inform the notary about changing of their residence after registration and don't inform it to executive office, before the issuance of executive records written or after issuance of executive and before its notification, all leaves and enforcement notices will be delivered to the same place where the document listed as residence (the Article 10 of executive bylaws of executive document, 1943-clause 3, Article 34 of the registration act 1972).
- 2- The legal documents such as affidavits, petitions, notices, and executive are sent to the residence of the person (Article 91 of the Civil Procedure Code).
- 3- It's been paid to mandate in ward's residence court. If the ward is not in residence, his residence court has the qualification (Article 48 of the non-litigious matters law).
- 4- Also according to Article 126 of the non-litigious matters "concerning the absentee's affairs is related to the local court that the absentee's last resort was at there." According to Article 163 of the mentioned law, "the affairs related to ... is the Part of the deceased's last residence has been in Iran and in the areas of court and If the deceased does not reside in Iran, it's with the trial court that it was the deceased's last residence was the in the area of that court".
- 5- According to Article 413 of the Commercial Code, the merchant hold must declare his residence to the court of that place within three days. Also, according to Article 34 of the Civil Procedure Code, "Bankruptcy problems must be filed in the court that stop or bankrupt person has resided in the area of that court".
- 6- Including those cases that residence affect on obligations is the obligation to pay the taxes based on the residence.

Clause 4 of Article 184 of the direct Approved Tax Code provides in 12/28/45 "Qualifying the finance administration on inheritance tax is the administration that the deceased's last legal residence is located in that area".

Marital Residence

Legal residence of a married woman is her husband's first residence. According to July 1975 Act by and the Article 108 of the New Civil Code, a woman's residence is her independence place after this.

The Article 108 of the New Civil Code provides that man and woman can have a separate residence without any harming to their common life rules.

Before the law of July 11, 1975, it was the same, the residence of the spouses, because the married women could not have any other residence except her husband's one. In the other words, according to the public order law, the woman's residence is the man's residence. But then for different reasons, (e.g. when divorcing), Even if there is no reference to the status of women, the lawyers suppose to numerous assumptions that could put the woman's interests in danger. That's why the previous Article of 215 was corrected and in some cases allows the women to select the separate residence. The July 11 law expresses the couples' residence Independent.

To Determine the Actual Person's Residence

Although the Article 102 of the French Civil Code introduces the each French man's residence as his important place, but it seems that there are four weaknesses in this legislation.

- 1- In some cases, the law of France, for specific individuals essentially, attempting to set a personal residence. This residence is called the legal residence so-called.
- 2- Family status, particularly marital status affect on determining the residence.
- 3- The location, in many cases is considered as the residence.
- 4- To choose the regular secondary residence, unity of the residence is in contrast.

Legal Residence Cases in Civil Code of France

Legal residence cases of French law include the following cases:

- 1- According to Article 107 of the French Civil Code, "Employees hired forever " that those who engage in public activities such as Judges, state officials, Heads of the Supreme Audit Court, prosecutors, ministers and law officers Oath to be in that same place even their activities don't include any interests for them.
- 2- Those who live on the boat (ship), Foreign tribes according to article No. 923 in 1958 and paragraph 2 of Article 102 of the French Civil Code, ships' owners, tribes and foreigners should to chose a certain area of land as the residence that are traveling in that even though it is not the main area of their activities.
- 3- According to law July 11, 1996, the residence of the stepson is the location of those who have accepted him as a stepson.
- 4- Employees who work with others, and live where they live.
- 5- It's not fully understood the status of illegitimate children and non-illegitimate one.

The illegitimate children will stay with their parents, but if one of them is married to someone else, illegitimate child should not be kept in the marital residence, except with the consent of the other party, to obtain an illegitimate child, and the wife's (the Article 7-334 of the New Civil Code, the Law of January 3, 1972). Also in the case of not known illegitimate children and according to June 4, 1970 Act, Community Service takes its responsibility.

Married Woman's Residence

Iranian Civil Code Article 1005 provides: "The residence of a married woman is her husband's residence". Nevertheless, a woman who her husband's does not have a known residence. A woman with her husband's consent or permission of the court can also have a separate residence".

In the civil code of Iran, the Imposes of husband's residence on the woman is in order to preserve unity of the family. Obviously, after divorcing, the forced residence from the Article 1005 of the Civil Code of Iran destroyed and she can have an optional residence.

Residence of Children and Incapacitated

The residence of children and incapacitated (i.e. those who are prohibited from seizing their property and legal affairs), to protect their interests is the same residence, but (father, grandfather, executor) and in the absence of parents is the residence of their guardian. Article 1006 of the Civil Code of Iran provides: "Residence of children and incapacitated is as their parents or guardians residence."

The Officials and Military Personnel's Residence

According to the Article 1007 of the Civil Code of Iran, "the government officers' residence is local, where they have continent mission." However, "both civil and military servants' residence will have dissipated after resignation or retirement and then they can have an optimal residence."

There are three kinds of residence in Iran's rights: optimal, obligatory and selective

1) Optional or Actual Residence

This residence is a place where a person lives in it and it's the important center of his affairs. If the person's location is somewhere else than his center of important affairs, this center is considered as his actual or optional residence.

According to the Article 33 of the constitution of Iran, no one can be banished from his residence or prohibited from staying at his favorite place or compelled to stay in a place unless the law requires.

2) Obligatory Residence

This residence is determined for some people in terms of their jobs and status or their relationship with the other people such as the married woman's residence in Article 1005 of the Civil Code of Iran and the residence of a fool, child and the insane in Article 1006 of the Civil Code...

3) Selective or Contractual Residence

According to the Article 1010 of the Civil Code, this residence is a place that the parties select it to perform obligations or claims arising from the contract or transaction notification procedure related to it.

In the case of the residence of a legal person, the Article 590 of the Commercial Code says that “the residence of a legal person is where his office is there”. While the latter part of Article 1002 of the Civil Code provides “the residence of the legal persons is their operations center”.

Conclusion

As it mentioned, the residence is the legal and financial relationship that binds a person to a specific place or area. In fact the residence is where that it's established a connection between the person and the authorities. The requirement to take advantage of the residence is the principle has been accepted in all legal systems. So each person must have a residence that this residence is the parent's residence and if the parent is unknown it's the child's birth place.

The qualified people can choose their own residence and they are able to change it (the principle of changing the residence), but no one is allowed to have more than one residence, the ban on the residence is optional, So a person can have several contract residences to perform their obligations, and claims related to them.

Today, although in international law, the role of residence is less than past despite of citizenship and nationality agent, in the internal law, the residence still plays an important role between the person and judicial, administrative and legal authorities. All papers, documents, notices, subpoenas, court orders and contracts, as well as any executive come to action in person's residence. Also the enjoyment of certain rights and to perform some certain tasks is subject to have a residence.

As we saw, the residence has a great value in the legal, social and economic activities. There is a famous Latin sentence between European and traders that says” we can feel secure when we know where can find our contract party at any time”. French lawmaker knows the residence as the most important person's location (Actual - Legal) and of course he benefits from the concept of residence for actual people as supplement.

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