

Protection of Weak Parties' Interests in Private International Law

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Abstract

After the conflict law revolution, based on the critique and reflection on the old legal choice methods, Private International Law has shifted from the initial pursuit of formal justice to a value orientation of substantive justice, thus giving rise to the principle of protecting the interests of weak parties. The weak in Private International Law specifically refer to vulnerable groups restricted in legal choice and dispute resolution, whose entitled rights are difficult to realize due to unequal status in contract negotiations, mainly manifested in foreign-related consumer contracts, labor contracts, and product quality tort cases. China's legislation on Private International Law has also been influenced by the concept of weak parties' protection, but it does not clearly demonstrate a result-oriented approach to protecting weak parties, with low operability. This paper aims to analyze China's current legislation, point out existing deficiencies, and propose reasonable improvement suggestions to promote the perfection and development of the principle and system of weak parties' protection in China, and effectively safeguard the rights and interests of weak parties.

Keywords

Weak Parties Protection; Substantive Justice; Result-Oriented

1. Introduction

Since the conflict law revolution, the single choice standard of conflict law has been unable to adapt to the multi-dimensional legal value propositions required by the times. The value pursuit from conflict justice to substantive justice has prompted the law selection standard of Private International Law to develop from a single connecting factor standard to a variety of choice methods based on connecting factors and supplemented by justice standards. China's Law of the Application of Law for Foreign-related Civil Relations (hereinafter referred to as the Application Law) has also been influenced by this concept, shifting from a single connecting factor standard to multiple legal choice methods, and its value orientation is also changing from conflict justice to substantive justice.

However, in the process of transplanting foreign experience, the Application Law

has suffered from misinterpretation of theories, one of which is the generalized abuse of the principle of protecting weak parties' interests. The principle of protecting weak parties' interests refers to the principle of restricting the party autonomy of one party in choosing the applicable law and dispute resolution methods, and guiding the parties to choose the law that can better achieve the result of substantive justice through pre-determined connecting points. It is a result-oriented legal choice method, which is often confused with the human rights protection concept, also result-oriented, in the theoretical circle. Many scholars believe that the legal provisions in the fields of marriage, family, and custody and guardianship also reflect the principle of protecting weak parties' interests, which is an exaggeration of the concept of the weak. Excessively exaggerating the concept of the weak and abusing the principle of protecting weak parties' interests will damage the minimum requirement of formal justice in Private International Law. Therefore, it is necessary for us to clarify the concept and scope of the weak in China's Private International Law, analyze China's existing weak parties' protection system through specific legal provisions, and then provide constructive suggestions for improving the principle of weak parties' protection in China.

2. Protection of Weak Parties' Interests: The Entry of Justice Values from Substantive Law into Conflict Law

2.1. Clarification of the Concept of "Weak Parties"

The term "weak parties" originally originated from the concept of vulnerable groups in sociology. In the sociological context, the concepts of the strong and the weak are relative, and according to different classification standards, the identities of the strong and the weak will also change accordingly. In daily life, people with disabilities are weak compared to able-bodied people; in work, unemployed people are also vulnerable groups compared to employed people; and in marriage and family relations, women, the elderly, and children often play the role of the weak. The weak in sociology usually refer to social vulnerable groups who have low social status and living conditions, are difficult to resolve the pressures faced in normal social life, and have less and harder access to social wealth distribution, and need the society to help them through improving the social security system.

The scope of the weak in the legal context is narrower than the sociological concept. The basic principle of equality before the law endows everyone with equal rights, status, and obligations, and formal equality is achieved among subjects. Especially in civil and commercial law, private law subjects are equal in status, enjoy full party autonomy, and can dispose of and exercise their rights. However, in reality, not everyone has the opportunity to fully exercise their rights, and the phenomenon of substantive inequality lurks under formal equality. There is a possibility that one party to an agreement may abuse its superior position in professional knowledge and internal information to force the other party to give up its legitimate rights.

The restriction of rights is the main characteristic of the weak in the legal context, which describes not only the weak in substantive law but also the weak in Private International Law. As a branch of law, Private International Law adjusts foreign-related civil and commercial legal relations. Therefore, the weak in the context of Private International Law can be summarized as: vulnerable groups whose rights are restricted in the field of foreign-related civil and commercial law. Specifically, the weak in Private International Law refer to vulnerable groups whose rights are restricted in legal choice and dispute resolution.

2.2. Protection of Weak Parties' Interests as an Embodiment of Substantive Justice Entering Private International Law

After experiencing the conflict law revolution, the traditional concept of conflict justice has been attacked and reflected on. In the past, Private International Law only valued the certainty, predictability, and consistency of legal choice results. This rigid pursuit of formal justice can no longer meet the increasingly complex social life situation, and more and more laws applied through a single choice method are retained or prohibited because they do not conform to the public policy of the forum state.

Facing such a dilemma, the standard of substantive justice came into being. The standard of substantive justice requires considering whether the results of the selected law are fair, whether they can meet the policy objectives of the forum state, and whether they can truly resolve foreign-related civil and commercial conflicts. The transformation of value pursuit from conflict justice to substantive justice has promoted the development of Private International Law towards a more open and flexible direction, and the legal choice method has also evolved from a single connecting factor standard to the comprehensive application of multiple choice methods. The entry of the concept of weak parties' protection into the field of Private International Law is one of the embodiments of the value pursuit of substantive justice. The protection of weak parties' interests originates from the supplement to the principle of equality in civil law. In the field of Private International Law, it is a special way of policy inclination, which ensures the weak parties' right to speak in the choice of law application and dispute resolution methods by restricting the party autonomy of the strong party in negotiations, and realizes substantive equality through formal inequality.

The legal subject personality under conflict justice is abstract, which cannot ensure that everyone's rights can be realized. Under substantive justice, through the analysis of specific personality and specific circumstances, we can find the right weak parties in legal relations and then take protective measures. The entry of the principle of protecting weak parties' interests into Private International Law is a further manifestation of the people-oriented value concept of legal norms. The pursuit of substantive justice in Private International Law reflects the progress of human civi-

lization.

3. Value Pursuit of the Principle of Protecting Weak Parties' Interests in Private International Law

3.1. Improving the Weak Status of Consumers

Based on the equality and interchangeability of market transaction subjects, civil and commercial law has constructed a series of systems such as private law autonomy and freedom of contract. The two parties to a transaction have equal bargaining power and can negotiate equally in the transaction process to maximize their respective interests. Although it is not always completely equal, the differences generated can also be made up for by the continuous exchange of identities between the buyer and the seller. However, with the strengthening of the trend of specialized division of labor, under the conditions of modern market economy, the identity boundary between consumers and producers and operators has become increasingly obvious, and the interchangeability of market transaction subjects has decreased. The application of new technologies, the addition of new components, and the development of new products have made consumers increasingly unfamiliar with product information. Operators often use their information advantage to conclude standard clauses with consumers to maximize their own interests and reduce their own responsibilities. In the field of Private International Law, this is manifested in the choice of laws and dispute resolution methods favorable to themselves. The contract negotiation process has become a mere formality, and consumers have completely lost their right to choose. However, with the awakening of consumers' rights awareness, more and more countries have begun to pay attention to the demands of this vulnerable group, and have begun to take preferential policies in both substantive law and conflict law to protect the legitimate rights and interests of consumers.

3.2. Protecting the Legitimate Rights and Interests of Workers

A labor contract is an agreement between a worker and an employer to determine the labor relationship, with the contract subjects specifically being a worker on the one hand and an employer on the other. A labor contract takes labor behavior as the object, and the worker exchanges his labor for labor remuneration. Therefore, a labor contract has both personal and property attributes, and its content often involves the realization and protection of personal basic rights. However, in reality, there is a huge gap between workers and employers in terms of negotiation status and consultation ability, which often leads to workers being unable to exercise their right to choose, and their own rights being difficult to be guaranteed and relieved. Therefore, in order to protect the legitimate rights and interests of workers in substantive law, Private International Law has also adopted a series of legal choice methods that tend to protect workers.

4. Interpretation of the Protection of Weak Parties' Interests in the Foreign-related Obligation Chapter of China's Application Law

4.1. Protection of Weak Parties' Interests in Foreign-related Contractual Obligations

China has adopted a similar legislative model for foreign-related consumer contracts and labor contracts: that is, through special legislation, separate provisions are made for foreign-related consumer contracts and foreign-related labor contracts, reflecting a result-oriented legal choice method with a tendency to protect weak parties' interests. The Application Law concretizes the principle of the most significant relationship in specific contracts for different situations. For example, in consumer contracts, the consumer's habitual residence is introduced, and in labor contracts, the worker's workplace and labor dispatch place are introduced as connecting points for law selection. These places are closely related to the life and work of the weak, and the parties are more familiar with the local laws, so their rights and interests are more easily protected.

In foreign-related consumer contracts, a legal choice method of unilateral party autonomy is also stipulated. Unilateral party autonomy refers to the act of one party to a foreign-related civil and commercial case unilaterally choosing the applicable law before or after a dispute occurs. When there is an obvious weak party in the legal relationship, the weak party is given the right to unilaterally choose the law. Consumers can compare the protection standards of the law of their habitual residence and the law of the place where the goods or services are provided, and then choose the law more favorable to themselves.

Articles 42 and 43 of the Application Law reflect the application of the principle of protecting weak parties' interests in foreign-related consumer contracts and labor contracts. Starting from protecting the legitimate rights and interests of consumers and workers, they have obvious result orientation, but they are incomplete result-oriented doctrines. Obviously, the legislators are aware that in these two situations, the weak parties may not be able to truly express their own will due to the unequal negotiation status between the two parties, so the legislative methods of unilateral party autonomy or prohibited party autonomy are adopted, but such practices also completely exclude the possibility of both parties agreeing to apply other laws that can provide higher protection standards. Although fixed connecting points ensure the predictability and certainty of legal application, they cannot truly reflect the purpose of protecting weak parties' interests.

The choice of the governing law for foreign-related contracts in China should more clearly define the principle of protecting weak parties' interests and add mandatory provisions as fallback clauses. Specifically, the original Article 42 can be modified as: in foreign-related consumer contract disputes, the parties are al-

lowed to agree on the applicable law, but the protection standard of the selected law shall not be lower than that provided by the law of the consumer's habitual residence; if the parties fail to reach an agreement, the law of the consumer's habitual residence shall apply; if the operator does not engage in related business activities in the consumer's habitual residence, the law of the place where the goods or services are provided shall apply. Similarly, Article 43 on foreign-related labor contracts can also add provisions on party autonomy, but the law chosen by the parties shall not violate the mandatory provisions of the forum law and the law of the worker's workplace.

4.2. Protection of Weak Parties' Interests in Foreign-related Non-contractual Obligations

The Application Law distinguishes product quality torts from general torts through special provisions, combining limited party autonomy, the principle of the most significant relationship, the principle of excluding the defendant's unforeseeability, and general tort legal choice theories to achieve the purpose of protecting product tort victims. Similar to foreign-related consumer contracts, foreign-related product quality torts also stipulate the victim's unilateral limited party autonomy. The victim can choose the law most favorable to himself based on weighing the law of his habitual residence, the law of the place where the damage occurred, and the law of the tortfeasor's main place of business.

In addition, Article 45 further concretizes the governing law rules of applying the law of the place of tort in general torts. The place of tort includes the place where the tort is committed and the place where the damage results occur. If only the place of tort is stipulated singly, the result of legal choice lacks predictability. China limits the place of tort in foreign-related product quality torts to the place where the damage results occur, making it easier for the victim to foresee the consequences of legal choice. This is an embodiment of the legislative provisions tending to protect the victim's foreseeable interests, and also reflects the modern method of civil liability law and the new development of the strict liability system.

The provisions of Article 45 on the legal choice of foreign-related product quality torts still have the following deficiencies:

First, Article 45 still excludes the possibility of both parties choosing to apply laws with higher protection standards. The existing provisions limit the scope of laws that victims can choose to the law of the victim's habitual residence, the law of the tortfeasor's main place of business, and the law of the place where the damage occurred, which greatly reduces the possibility for the parties to choose laws with higher protection standards and cannot truly achieve the purpose of protecting weak parties' interests.

Second, the lack of the place of product sale as a connecting point for choosing the governing law. The place of product sale is also a connecting point closely related to

the case in foreign-related product quality tort cases, which meets the reasonable expectations of the parties. On the one hand, producers and operators should reasonably foresee the relevant laws of the place of sale; on the other hand, since consumers choose to purchase products in the place of sale, it indicates that they have a reasonable expectation of the local safety production standards.

Third, the protection of the tortfeasor's interests is obviously insufficient. China only grants the victim the right to unilaterally choose the law, but with the increasing phenomenon of consumers actively traveling abroad for consumption, it is costly to require producers and operators to foresee the transaction risks in various places and they cannot foresee the legal provisions of each consumer's country of origin, which violates the defendant's foreseeability principle and is an act of excessively pursuing substantive justice and destroying the bottom line of formal justice in law selection.

To sum up, the modification suggestions for Article 45 of the Application Law are as follows: First, allow the parties to negotiate and choose the applicable law, but if the protection standard of the selected law is lower than that of the law of the victim's habitual residence, it shall be invalid. Second, distinguish between active consumers and passive consumers, and introduce the place of product sale as a connecting point for law selection. For product quality tort cases arising from active consumption abroad, if the parties have not negotiated and chosen the law, the law of the tortfeasor's main place of business, the law of the place of product sale, or the law of the place where the damage results occur may apply; if it is a passive consumer, in the case of no negotiated choice of applicable law, the law of the habitual residence shall apply, and if the habitual residence is uncertain, the law of the place of product sale may apply.

5. Conclusion

To sum up, in substantive law, the protection of weak parties' interests has become an important principle, which is widely used in civil and commercial substantive laws such as contract law, playing an important role in balancing the status and negotiation capabilities of the two parties to a contract, achieving the value of substantive justice in law, and maintaining social harmony. In the field of Private International Law, the protection of weak parties' interests is still in its infancy. China's Application Law intends to absorb this principle into China's Private International Law legislative system, which reflects that China's Private International Law is striving to achieve case-by-case justice on the basis of pursuing the predictability of legal application results, and has certain positive significance. However, the existing law is far from enough to effectively play the role of the principle of protecting weak parties' interests in protecting weak parties. The unclear definition of weak parties, the lack of mandatory rules as fallback clauses, and the incomplete result-oriented doctrine reflected in the legislative provisions all need to be continuously modified and

improved in the future. Properly using the protection of weak parties' interests to give substantive protection to weak parties and help them realize their rights is the inevitable trend of the future development of law towards people-oriented and substantive justice. However, it should be remembered that conflict justice is the bottom line and the most basic value pursuit of Private International Law. We should not violate the basic legal choice method by excessively pursuing the justice of individual case results. Finding the balance between conflict justice and substantive justice is the ultimate goal pursued by the future weak parties' protection system.

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