US-China Law Review, May 2024, Vol. 21, No. 5, 204-210
doi:10.17265/1548-6605/2024.05.003

Research on the Modernization of the Rule of Law in Work Injury Insurance Conflict Law

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The traditional legal selection method for work injury insurance is based on the Savigny model, which has fundamental flaws in its singularity, national centralism, and Westernization. "Consultation, construction, sharing, and governance" are the core principles of the legal theory for building a community of shared future in labor, which requires the transformation of the rule of law in work injury insurance conflicts from the traditional jurisdiction method to the modern "four shares" method.

Keywords: work injury insurance, conflict of laws, modernization of rule of law

The modernization of work injury insurance conflict law refers to the transition of the legal selection system for work injury insurance from traditional to modern under the guidance of the theory of building a community of shared destiny in labor law. The Communist Party of China emphasizes: "We must promote global governance reform and the construction of a community with a shared future for mankind".[1] Specifically, in the field of work injury insurance conflict law, this means promoting the reform of global governance in the conflict of laws on work injury insurance and promoting the construction of a community with a shared destiny for labor.

The Legislative Practice of Traditional Legal Choice Methods for Work Injury Insurance

The traditional legal choice method for work injury insurance is established based on the Savigny model, which is the jurisdiction method. This method has been faithfully implemented both in the field of domestic conflict law of work injury insurance and in the field of international conflict law of work injury insurance.

Domestic Legislative Practice

American practice. In the United States, work injury insurance is also known as "workers' compensation" or "industrial injury compensation". The United States resolves the conflict of labor compensation laws between states by adopting the "lex fori" principle of conflict of laws. Article 181 of the Second Restatement of Conflict

Funding project: This article is a phased result of the National Social Science Fund of China's project on "Research on Transnational Work Injury Insurance Under the Concept of a Community With a Shared Future for Mankind Along the Silk Road for the Benefit of All" (Project Number: 19XFX015).

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[1] http://www.gov.cn/xinwen/2020-11/17/content_5562085.htm, accessed on June 7, 2024.

of Laws in the United States stipulates that as long as a state has some minimum "connection" with the case, it can apply its local law (lex fori). The Pacific Employers Insurance Co. v. Industrial Accident Commission of California and the Alaska Packers Association v. Industrial Accident Commission of California cases established the principle that in cases where multiple states have jurisdiction, as long as the state where the court is located has an interest in the case, it can apply its local law, that is, the lex fori.[2]

Chinese practice. China resolves conflicts in work injury insurance law by applying the "law of the employing country" as a principle and the "law of the nationality country (or the dispatching country)" as a supplement. The Social Insurance Law of the People's Republic of China stipulates that foreigners employed within the territory of China shall participate in social insurance in accordance with the provisions of this law. The Regulations on Work Injury Insurance promulgated by the State Council of the People's Republic of China stipulate that if an employee is dispatched to work abroad and the law of the country or region they are going to requires them to participate in the local work injury insurance, they shall participate in the local work injury insurance and their domestic work injury insurance relationship will be suspended; if they cannot participate in the local work injury insurance, their domestic work injury insurance relationship will not be suspended.

International Legislative Practice

EU practice. The European Union resolves conflicts in work injury insurance law among member states by adopting the principle of the "law of the country where the worker is employed" and the "law of the country where the worker resides or the country where the employer's company is registered (the place of business)." The EU's Coordination of Social Security Regulations[3] stipulates that the work injury insurance of cross-border workers should apply to the law of the country where they are employed, regardless of whether they reside in the country where they work. However, there are three exceptions: cross-border workers employed by the same employer in different member states, if at least 25% of their work is completed in the country of residence, then the law of the country of residence applies; otherwise, the law of the country where the employer's company is registered applies; cross-border workers employed by multiple employers or by employers with companies established in different member states, if a significant part of their work is completed in the country of residence, then the law of the country of residence applies; otherwise, the law of the country where the employer's company is registered applies; cross-border workers employed by the same employer in two or more countries, and if the employer's company is registered outside the EU, then the law of the country of residence applies.

Labor organization practices. The Convention No. 157 on the Maintenance of Social Security Rights, adopted in 1982, classifies migrant workers into four categories: general employees, self-employed individuals (freelancers), seafarers, and non-economically active persons. For general employees and self-employed individuals (freelancers), the application of work injury insurance law follows the principle of "the law of the country where the work is performed". For seafarers, the application of work injury insurance law follows the principle of "the law of the flag state". For non-economically active persons, the application of work injury

[2] Pacific Employers Insurance Co. v. Industrial Accident Commission of California, 306 U.S. 493 (1939); Alaska Packers Association v. Industrial Accident Commission of California, 294 U.S. 532(1935).

[3] Regulation (EEC) No. 1408/71 of the Council of 14 June 1971 on the Application of Social Security Schemes to Employed Persons and Their Families Moving within the Community; Council Regulation (EEC) No. 574/72 of 21 March 1972 Fixing the Procedure for Implementing Regulation (EEC) No. 1408/71.

insurance law follows the principle of "the law of the country of residence". Regarding the application of work injury insurance law for the first three categories of personnel, the Convention stipulates that member states may also agree to apply the principle of "the law of the country of residence". In addition, to protect the interests of migrant workers, the Convention also stipulates that member states may, through consensus, make other exceptions to the aforementioned principles.

Sino-Russian, Sino-Singaporean, and Sino-Jordanian bilateral treaty practices. The Sino-Russian bilateral treaty adopts the principle of "the law of the country where the worker has a long-term residence" or "the law of the labor-receiving country". The Sino-Russian Agreement on Short-Term Labor between the Russian Federation and the People's Republic of China stipulates: compensation for work-related injuries, occupational diseases, and other health damages that occur during the labor period and are directly caused by labor shall be governed by the law of the long-term residence country of the enterprise legal person with whom the worker has a labor relationship, and the workers who have labor agreements (contracts) with the employer of the labor-receiving country shall be governed by the law of the labor-receiving country. Both the Sino-Singaporean and Sino-Jordanian bilateral treaties adopt the principle of "the law of the country where the work is performed". The Sino-Singaporean Memorandum of Understanding on Bilateral Labor Cooperation and its annexes stipulate that the illness, work injury, or death of Chinese labor personnel shall be handled in accordance with Singaporean law. The Sino-Jordanian Agreement on Bilateral Labor Cooperation and its annexes stipulate that Jordanian employers should insure Chinese labor personnel against accidental injury in accordance with the relevant laws and regulations of Jordan.

Fundamental Flaws in Traditional Legal Selection Methods for Work Injury Insurance

The Savigny conflict of laws system has inherent flaws in its singularity, national centralism, and westernization. Although the conflict of laws for work injury insurance was constructed after Savigny's death, the fundamental flaws of its conflict of laws system have been deeply embedded in the nascent body of work injury insurance conflict law.

Singularity

The so-called singularity refers to the method of resolving legal conflicts by stipulating a single connecting point and applying a single governing law. The singular paradigm is the basic pattern of Savigny's bilateral or multilateral approach. The Savigny model aims to achieve the certainty of the application of law and the consistency of the judgment results. The function of private international law is to "find the best solution in terms of space" (Kegel, 1979, pp. 615-617), striving to ensure that no matter where the lawsuit is located, each type of multilateral private law dispute can apply the same law. According to its logic, "the law of the appropriate country is the appropriate law" (Symeonides, 2000, p. 44). The basic characteristics of the Savigny model are: (i) It focuses only on the goal of certainty in the choice of law, neglecting the goal of flexibility; (ii) it focuses only on the close connection of the dispute case with the applicable law, neglecting the fairness of the substantive results obtained by applying that law; (iii) it emphasizes the role of territorial or spatial connecting points in the choice of law, neglecting the legislative policies and particularities of the cases implied in the competing laws; (iv) it advocates for the rigidity and closure of the choice of law, neglecting its flexibility and openness. The aforementioned conflict principles for resolving the choice of law in work injury insurance are all formed in accordance with and adherence to the Savigny model.

National Centralism

The so-called national centralism refers to the method of resolving legal conflicts based on the state-centric approach that was established following the end of the Thirty Years' War in the Westphalian system. The state paradigm is the foundation upon which the Savigny model relies. Savigny believed that conflict of laws is the "law of the state" tied to a certain sovereign,

> the classical process of choosing law always guides the state's judges to apply the state's law. The state is both the enforcer and the creator of the law that can be enforced, and it is both the subject and the object of the legal choice process. (Li, 2012, p. 51)

Sovereignty is closely related to territory, and the territorial scope is the range of the sovereign's will, and legal conflicts are "conflicts between the laws of the territories". Every individual appears in the guise of the "state", and individuals only establish a connection with the state. "Citizenship" is the intermediary that connects individuals with the law of a specific state (Li, 2012, pp. 51-60). The aforementioned conflict principles for resolving the choice of law in work injury insurance are all exclusively keen on the domestic law of the sovereign state applicable to the work injury insurance relationship, without any consideration for the interests of the work injury victims and their families.

Westernization

The so-called westernization refers to the method of resolving legal conflicts based on Christian civilization and Western values. The Savigny model is the crystallization of the study of "Roman law, which constitutes most of the common law of modern Germany and other European continental countries," (Savigny, 1999, p. 1) and is an important component of the Western global governance model that has dominated the world for hundreds of years. The legal conflicts it explores and resolves are all between the laws of "Christian civilization" countries, occurring within the framework of Christianity as the supreme framework, and thus are not conflicts between different values (Li, 2012, p. 54). Not only is the scope of the conflict law limited to the so-called "Christian civilization" countries, but the applicable law cited in adjudicating cases is also the domestic law of the so-called "Christian civilization" countries. The aforementioned conflict principles for resolving the choice of law in work injury insurance are all reflections of the values, social lifestyles, and historical and cultural traditions of Christian civilization countries. The aforementioned Chinese law and the conflict principles adopted in the bilateral agreements between China and Russia, Singapore, and Jordan regarding work injury insurance for migrant workers have also been profoundly influenced by Western civilization.

The Transformation of the Method for Selecting the Law for Work Injury Insurance From Traditional to Modern

The traditional method for selecting the law for work injury insurance is at odds with the legal theory of building a community of shared destiny for labor. "Mutual consultation, joint construction, shared benefits, and collaborative governance" are the core principles of the legal theory for building a community of shared destiny for labor. It demands that the legal governance of work injury insurance conflicts undergo a transformation from traditional to modern in the following three aspects.

Adopting the Legal Relationship Segmentation System

The purpose of adopting the legal relationship segmentation system is to overcome the shortcomings of the traditional jurisdiction method, which only applies a single law, that is, a single paradigm, and to achieve the shared application of multiple or plural national laws. The International Labor Organization (ILO) Convention No. 157 on the Maintenance of Social Security Rights in 1982, which classifies migrant workers into four categories: general employees, self-employed individuals (freelancers), seafarers, and non-economically active persons, is an example of the application of the segmentation system. The Sino-Russian Bilateral Short-Term Labor Agreement also uses the segmentation system to divide workers into two categories: (i) workers executing agreements related to the completion of work or the provision of services signed between long-term resident country corporate legal persons with corporate legal persons or natural persons in the receiving country; (ii) workers executing labor agreements reached by themselves with corporate employers in the receiving country. But it must be pointed out that the above practices are all divisions of the work injury insurance legal relationship from the perspective of the subjects of the legal relationship. Such divisions can lead to inequality in the application of the law for different groups of migrant workers, thereby leading to injustice in the substantive outcomes for different groups of migrant workers. In the final analysis, it is the application of different laws to different people, which violates the principle of "equality before the law". In view of this, we believe that the work injury insurance legal relationship should be divided from the perspective of different issues or matters involved in the legal relationship, such as the calculation of the insurance participation period, the issue of work injury benefits payment, the issue of rights transfer and continuation, and so on. In addition, based on the diversity of the subjects of work injury insurance legal relations, the work injury insurance legal relations can also be divided into: (i) the work injury insurance relationship between the insurance management subject and the insured subject; (ii) the insurance assistance relationship between the insurance management subject and the insurance auxiliary subject; (iii) the insurance underwriting relationship between the insurance management subject and the insurance policyholder subject; (iv) the insurance assistance relationship between the insurance auxiliary subject and the insured subject.

Adopting Multiple Pointers for Connection Points

The purpose of using multiple or pluralistic connection points is to overcome the shortcomings of the traditional jurisdictional method of the national paradigm, to treat the laws of several countries involved in conflict cases equally, and to enhance the selectivity and flexibility of the choice of law. The legal relations involved in work injury insurance are numerous, such as the place of occurrence of occupational disasters or diseases, the main place of employment activities, the place where the worker works, the place of residence of the worker, the place of acceptance of labor services, the place of dispatch of labor services, the place of registration (business place) of the employer's company, the place where the worker participates in work injury insurance, the court's place, the country of the ship's flag, and so on. These connection points to laws that are equally applicable without any distinction of superiority, sequence, or primary and secondary in terms of application. That is, they all have equal applicability. Whether the laws cited according to these connection points are ultimately applicable to work injury insurance conflict cases depends entirely on whether they are more

conducive to protecting the rights of survival and development of the victims of work injury, rather than whether they have a closer connection to the case or the parties involved.

Adopting Policy-Oriented Linkage Points or Result-Oriented

Adopting a result-oriented or policy-oriented approach to connecting points is to overcome the drawbacks of the traditional jurisdiction method of the Western paradigm. It involves pre-setting a certain substantive result or policy, and then making a choice among conflicting legal rules based on the guidance of the substantive result or policy being pursued. This theory can be traced back to the period when the Italian School of Commentators was prevalent in the Middle Ages. At that time, a scholar named Magister Aldricus proposed a method of legal selection that "chooses the better and more useful law to apply" (Neumeyer, 1916 p. 66). The "Law of the People's Republic of China on the Application of Law for Foreign-Related Civil Relations" adopts this method of legal selection for maintenance and guardianship relationships. Article 29 of the law stipulates: Maintenance shall be governed by the law of the habitual residence of one party, the law of the nationality of the parties, or the law of the place where the main property is located, whichever is more favorable to the protection of the rights and interests of the person being maintained. Article 30 stipulates: Guardianship shall be governed by the law of the habitual residence of one party or the law of the nationality of the country, which is more conducive to protecting the rights and interests of the ward. Like the maintained and the wards, workers, the employed, victims of occupational injuries, and migrant workers are also considered vulnerable. Therefore, in matters concerning the choice of law for work injury insurance involving these individuals, the general rule of applying the law that is more beneficial to the protection of the interests of the victims of occupational injuries and their families should also be followed. This principle is known as the "favorable law" principle, or the "higher rather than lower" principle. That is to say, when there are differences in the legal provisions of several countries on the same matter, the law that is most beneficial to the workers should be given priority. From the perspective of the outcome of the application of law, although the law of a country with higher standards is applied, it implies that the law of a country with lower standards is also applied at the same time (Wang, 1991, p. 34). This is a manifestation of the legal principle of "joint consultation, joint construction, sharing and co-governance." Looking again at the domestic substantive law of work injury insurance and the International Labor Organization's international substantive conventions on work injury insurance from countries around the world, the philosophy of these substantive laws is all aimed at protecting the rights of the employed to survive and develop in the face of occupational disasters (Zheng, 2004, pp. 37-44). Therefore, the conflict of work injury insurance law should maintain the same spirit as the substantive law of work injury insurance, pursuing the result-oriented or policy-oriented choice of work injury insurance law, applying the law that is more beneficial to the protection of the interests of the victims of occupational injuries and their families, so as to exempt "the party from the adverse results that may be brought to them by coercive or general rules of legal choice" (Symeonides, 2000, p. 38). Applying the "favorable law" principle or the "higher rather than lower" principle can not only protect workers from occupational diseases and injuries, protect the interests of workers employed in foreign countries, and realize human dignity, but also promote the free flow of labor across borders and sustainable and inclusive global economic growth, establishing and maintaining a world of lasting peace based on social justice.

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