

Reflections on the Application of Dynamic Connecting Points in the Declaration of Death for Foreign-Related Cases

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Abstract: With the development of globalization and increasing transnational population movement, foreign-related legal affairs have become increasingly complex. The current legal provisions in China regarding the declaration of death for foreign-related cases have certain issues, particularly in the application of dynamic connecting points. The uncertainty in their application can easily lead to confusion in legal application in practice. By analyzing the case of Ma's revocation of the declaration of death heard by the People's Court of Haining City, Zhejiang Province in 2020, this paper reveals the deficiencies in the current law regarding the application of dynamic connecting points in China. It suggests applying the law of the last habitual residence before disappearance to overcome this issue. This suggestion can address the uncertainty brought by dynamic connecting points to a certain extent, making the application of the law clearer and more stable, thereby better protecting the legitimate rights and interests of interested parties, promoting social order stability, and ensuring fairness and justice in the law. This improvement measure is expected to provide a reference for the perfection of relevant laws and enhance the certainty and rationality of judicial decisions.

1. Introduction

The declaration of death is an important legal system designed to address the uncertainty in the legal status brought about by the long-term disappearance of a natural person. It confirms their legal status through legal fiction, thereby protecting the legitimate rights and interests of interested parties and maintaining social order stability. China's current laws on the application of foreign-related declaration of death have certain issues, especially in the application of dynamic connecting points, which have exposed many deficiencies. A dynamic connecting point is a legal connecting point that changes with time or factual circumstances. While its flexibility can provide convenience in certain situations, it can lead to uncertainty and confusion in legal application in declaration of death cases. This paper will start from the current legal provisions, analyze specific cases, explore the application issues of dynamic connecting points in foreign-related declaration of death cases, point out the main deficiencies, and propose improvement suggestions. It hopes to provide a reference for the improvement of relevant laws and promote fairness and efficiency in judicial practice.

2. Current Situation and Problems in the Application of Laws on Foreign-Related Declaration of Death in China

2.1 Current Legal Provisions

According to Article 13 of the "Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations," the law of the habitual residence of a natural person shall apply to the declaration of disappearance and declaration of death for foreign-related cases. Habitual residence refers to the place where a natural person has lived continuously for one year or more after leaving their domicile and regards it as the center of their life. The original intention of this provision is to flexibly apply the most relevant law in handling foreign-related declaration of death cases. However, this provision has certain deficiencies in practice. Habitual residence, as a dynamic connecting point, lacks certainty, especially in cases where the person being declared dead has been missing for a long time. Determining habitual residence becomes difficult as a person may live in multiple places during different periods, particularly for those who frequently travel or move to different countries and regions. The flexibility of dynamic connecting points can lead to confusion in legal application in certain cases, increasing the difficulty for judges in applying the law in specific cases. In practice, judges may need to spend a lot of time and resources determining the habitual residence of the person being declared dead, affecting the efficiency and accuracy of case handling[1].

2.2 Case Analysis

Taking the case of Ma's application to revoke the declaration of death heard by the People's Court of Haining City, Zhejiang Province in 2020 ([2020] Zhe 0481 Min Te 1589), as an example, Ma left home in 2000 and lived in Russia for many years before losing contact with his family. In 2012, Ma's eldest son applied to the court for a declaration of his death. After following the legal procedures, the court declared Ma dead in 2013. However, Ma returned to his hometown in 2020 and applied for the revocation of the death declaration, and the court eventually revoked the original judgment. Despite Ma living in Russia for many years, the court did not handle the declaration of death as a foreign-related case, nor did it apply the provisions of Article 13 of the Law on the Application of Laws. This case exposes the application issues of dynamic connecting points in foreign-related declaration of death cases, namely the difficulty courts face in identifying foreign-related factors and applying dynamic connecting points, leading to deviations in legal application. In this case, the court did not consider Ma's long-term residence in Russia and directly applied domestic law, ignoring the importance of foreign-related factors. This approach not only violated the original intention of the Law on the Application of Laws but also affected the fairness and rationality of the judgment to a certain extent[2].

2.3 Legal Application Problems

In declaration of death cases, the person being declared dead is usually missing for many years, making it difficult to accurately determine their habitual residence. Determining the habitual residence of a long-term missing person is complex, especially when they have multiple potential residences. This increases the difficulty for courts in handling cases. Courts, in dealing with foreign-related declaration of death cases, have not strictly followed relevant legal provisions, making the provisions on dynamic connecting points ineffective. In practice, judges may make inconsistent judgments due to a lack of clear guidance, causing confusion and uncertainty in legal application. The current law fails to meet the complex and variable situations in foreign-related

declaration of death cases. These issues not only affect the authority and seriousness of the law but also harm the legitimate rights and interests of related parties. With increasing international personnel flow, similar cases are likely to rise. If the law cannot adapt to these changes, judicial practice will face more challenges and difficulties. Courts need to make fair and reasonable judgments under legal guidance to maintain the dignity and authority of the law while flexibly addressing complex practical situations[3].

3. Application Issues of Dynamic Connecting Points in Foreign-Related Declarations of Death

3.1 Flexibility and Deficiencies of Dynamic Connecting Points

Dynamic connecting points refer to legal connecting points that change with time or factual circumstances. Their advantage lies in the ability to choose the most suitable law based on specific circumstances to achieve fairness and justice in law. However, dynamic connecting points also have obvious deficiencies. Their lack of certainty can lead to confusion in the application of laws in foreign-related declaration of death cases, especially when the person being declared dead has been missing for a long time, making it highly uncertain to determine their habitual residence. This flexibility can increase the difficulty for judges in making decisions, leading to inconsistencies in the application of laws and affecting the authority and consistency of judicial decisions. While dynamic connecting points offer convenience in resolving complex foreign-related legal issues, their application in declaration of death cases reveals significant problems. The habitual residence of the person being declared dead may change multiple times during their disappearance, possibly involving multiple countries or regions, presenting significant challenges for judges. In some cases, the habitual residence of the person may be difficult to determine, leading to confusion and inconsistency in legal application. The flexibility of dynamic connecting points can also increase the subjectivity in legal application, affecting the fairness and authority of judicial decisions[4].

3.2 Conflict between the Static Nature of Declarations of Death and Dynamic Connecting Points

The declaration of death is a legal fiction aimed at stabilizing legal relationships and addressing the uncertainty in legal status caused by the long-term disappearance of a natural person. As a static legal event, its legal consequences should be stable and certain. However, the flexibility and uncertainty of dynamic connecting points conflict with the static nature of declarations of death. In practice, dynamic connecting points cannot provide a stable legal basis for declarations of death, making it difficult for courts to handle such cases. For example, the habitual residence of the person being declared dead may change multiple times before their disappearance, possibly involving multiple countries or regions, making it challenging for courts to accurately determine the applicable law. The legal nature of declarations of death requires a stable legal foundation, but the flexibility and uncertainty of dynamic connecting points make it difficult to establish this foundation. Determining the habitual residence of the person being declared dead is a key issue, but the application of dynamic connecting points often complicates and hinders this process. Dynamic connecting points may lead to confusion in legal application in some cases, increasing the difficulty of judicial decisions and making the legal effects of declarations of death unstable and uncertain. This conflict not only affects the application of the law but also damages the legitimate rights and interests of the parties involved to some extent[5].

4. Improvement Suggestions for Dynamic Connecting Points

4.1 Applying the Law of the Last Habitual Residence Before Disappearance

To overcome the deficiencies of dynamic connecting points in foreign-related declaration of death cases, it is recommended to apply the law of the last habitual residence before the disappearance of the person being declared dead. The last habitual residence before disappearance refers to the place where the person continuously lived for one year before being considered missing and regarded as the center of their life. Applying the law of the last habitual residence before disappearance can address the uncertainty brought by dynamic connecting points to some extent, making the application of the law clearer and more stable. If the person being declared dead did not have a clear habitual residence before their disappearance, it is recommended to apply the law of their domicile as a fallback provision to ensure the reasonableness and feasibility of the legal application. This approach not only provides a relatively stable legal basis but also reduces the subjectivity and uncertainty in the application of the law. By determining the last habitual residence before disappearance, the court can apply the relevant law based on a clear legal connecting point, thereby enhancing the stability and authority of judicial decisions. This improvement suggestion is also easier to implement in practice, reducing the difficulties and challenges judges face in applying the law. This suggestion is based on theories and practices in private international law, where personal law is usually determined by the law most closely connected to the person, especially in legal issues involving personal relations. The law of the last habitual residence before disappearance aligns with this principle, as it is most closely connected to the person's life and legal relationships. By applying this law, the court can more accurately reflect the person's legal status and social connections before their disappearance, leading to fairer decisions[6].

4.2 Reasonableness and Feasibility of Legal Application

Applying the law of the last habitual residence before disappearance is highly reasonable and feasible. In terms of reasonableness, it aligns with the legal nature and institutional value of declarations of death, helping to achieve fairness and justice in the law. The institutional value of declarations of death lies in promptly resolving the property and personal relations of the missing person, restoring normal social order, and improving the efficiency of social and economic operations[7]. The long-term disappearance of a natural person can lead to instability in their personal and property relations, affecting social order. The establishment of the declaration of death system aims to address this issue by ending the uncertainty in the legal relationships of the missing person through legal means. In terms of feasibility, the last habitual residence before disappearance is a clear time point with strong operability. Courts can investigate the life trajectory of the person before their disappearance to determine their last habitual residence and apply the corresponding law. This operation not only has high feasibility but also effectively reduces confusion and uncertainty in the application of the law in practice, improving the efficiency and accuracy of judicial decisions. The reasonableness of applying the law of the last habitual residence before disappearance ensures high certainty and stability in the legal application of declarations of death, helping to achieve fairness and justice. Its feasibility lies in being a specific time point, allowing courts to determine the last habitual residence through investigation and apply the relevant law, thereby enhancing the efficiency and accuracy of judicial decisions[8].

5. Conclusion

The current provisions on the application of laws in foreign-related declaration of death cases in

China have certain issues, particularly the uncertainty and insufficient flexibility of dynamic connecting points in practice. In foreign-related declaration of death cases, courts should prioritize the application of the law of the last habitual residence before the disappearance of the person being declared dead. This improvement measure can provide a clearer and more stable legal application foundation, reducing subjectivity and uncertainty in legal application, thereby enhancing the fairness and authority of judicial decisions. The law of the last habitual residence before disappearance has significant advantages in terms of reasonableness and feasibility. This rule aligns with the legal nature and institutional value of declarations of death, helping to promptly resolve the property and personal relations of the missing person, restore normal social order, and improve the efficiency of social and economic operations. In practice, using the last habitual residence before disappearance as a specific time point allows courts to investigate the life trajectory of the person before their disappearance, determine their last habitual residence, and apply the corresponding law. This paper proposes the above suggestions in the hope that through this discussion, it can promote the improvement of relevant laws and advance judicial fairness and social harmony.

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