

On the habitual residence in the Law on the Application of Law

Manqiu Bi

Guangxi Normal University, Guilin 541000, China.

13116033273@163.com

Abstract. The law of habitual residence has been widely applied in Statute on the application of laws to civil relationships involving foreign elements of the people's republic of china " , and the fields that have appeared involve the field of civil subject, the field of marriage and family, the field of succession and the field of obligations, which provide specific guidance for the judicial practice of the However, in the course of the application of the habitual residence method in our country, we should define the concept of the habitual residence more clearly, and make a clear distinction between the connecting points between legal persons and natural persons, so that the application of law is more accurate and reasonable, and the adoption of the applicable law should take a diversified choice and introduce a new judicial interpretation to further resolve the contradiction between the application of old and new laws; and the criteria for determining the habitual residence should be clearer and more flexible in order to better provide a solution to disputes over judicial practice.

Keywords: Habitual residence; Nationality; Domicile; Personal law; Applicable of law.

1. Introduction

The Law of the People's Republic of China on the Application of the Law of the People's Republic of China on Foreign-related Civil Relations (hereinafter referred to as the Law on the Application of Laws), which was implemented in China in 2011, abandoned the previous nationality as a connecting point and introduced "habitual residence" as a connecting point. In China's private international law legislation Historically, the introduction of habitual residence is a major step forward, which is conducive to better settlement of foreign-related civil disputes. Fundamentally, habitual residence was introduced into China a long time ago, but scholars and experts in the past usually translated it as "Habitual residence". After the implementation of the Law on the Use of Law, the Supreme People's Court promulgated the "Law of the People's Republic of China on the Application of the Law of the People's Republic of China on Foreign-related Civil Relations" in December 2012 in order to solve the application problems and conflicts in practice. Interpretation of Several Issues (I)" (hereinafter referred to as "Judicial Interpretation I"), which provides a more detailed interpretation of how to understand the habitual residence stipulated by the law, but still does not give a complete, accurate and comprehensive explanation of the habitual residence In addition, before the promulgation of the "Law on the Application of Law", "habitual residence" was actually introduced long ago, but the research on it was not in-depth. What is the place of residence, what is the significance of its introduction, and if this introduction is beneficial to the progress of China's private international law, how should we learn from foreign legislative practices. Because the habitual residence is a newly introduced concept in China, as mentioned above. Everyone mainly focuses on the problems of the specific application in practice and how to solve them, but not too much attention to whether the concept is clear or not. As far as China is concerned, what is the applicable standard for the place of habitual residence, so often the definition and criteria of place of residence still need to be explored.

The paper mainly adopts the method of literature analysis and research. By analyzing the provisions of the relevant laws (mainly the Law on the Application of Law) of the habitual residence in the country, including its concept and the meaning given in practice, to understand the current situation of the application of the habitual residence, there are Conducive to determining the research topic of the dissertation; combined with the relevant provisions of the Law on the Application of Law and its judicial interpretations, clarify the constituent elements of the place of habitual residence, so

that the application of the place of habitual residence can be specific and visualized; through the design of the place of habitual residence An overview of the laws and regulations, understand the current situation and problems of their application in the country, explain their shortcomings and deficiencies in a comprehensive and detailed manner, and put forward relevant suggestions and views for changes.

2. The habitual residence is stipulated in the Law on the Application of Law and its Judicial Interpretation (1)

2.1 Specific manifestations of habitual residence in the Law on the Application of Law

In the “Law on the Application of Law”, “habitual residence” appears in 25 articles in the field of civil subject, marriage and family, inheritance and creditor's rights, and the term appears 44 times, which is embodied in the following aspects:

First of all, the provisions concerning the application of the law of habitual residence in the field of civil subjects include: Article 11, Article 12, Article 13, Article 14, Article 15, Article 19 and Article 20. Among them, the “habitual residence” is used as the only connection point: the application of laws concerning the legal capacity of natural persons, the declaration of disappearance and death, and the applicable law of natural persons' personality rights; the “habitual residence” is used as a selective The connection points apply: the legal application of the natural person's capacity for conduct and the basis of legal person-related matters; in addition, when the natural person is stateless or whose nationality is unknown, the law of the place of habitual residence applies.

Secondly, the provisions concerning the application of habitual residence in the field of marriage and family include: Article 21, Article 22, Article 23, Article 24, Article 25, Article 26, Article 28, Article 29, Article 30, etc. nine clauses. Among them, the “habitual residence” is applied as a selective connection point: the application of the applicable law on matters concerning marriage procedures, the dissolution of adoption relationships, parental relationships and guardianship relationships; the “habitual residence” is the first choice. The connection points are applicable: if the parties do not have the applicable law, the conditions of marriage, the personal relationship between husband and wife, and the relationship between husband and wife are related to the property; “Applies as the only link: the application of the law concerning the conditions and formalities of the adoption of the law applicable. In these provisions, nationality also applies as an optional nexus or supplements the application of habitual residence.

Again, with regard to the field of succession, there are three articles that use “habitual residence”. Among them, Article 31 on the inheritance of movable property applies the habitual residence as the only connection point; Articles 32 and 33 apply as a selective connection point; “nationality” and “habitual residence” are parallel choices Applicable.

Finally, with regard to the area of claims, the articles concerning habitual residence are: Article 41, Article 42, Article 44, Article 45, Article 46 and Article 47. Among them, the “habitual residence” is applied as the preferred connection point: the application of laws concerning foreign-related contracts, consumer contracts and the applicable law of product liability; the “habitual residence” is applied as the only connection point: the relevant The legal application of the applicable law of personality rights; and if the parties do not choose by agreement, the first application of habitual residence is: management without cause and unjust enrichment. These provisions do not belong to the field of personal law in the traditional sense and are innovative to a certain extent.

2.2 Definition of habitual residence in Judicial Interpretation (1)

There is no uniform and clear constituent element of habitual residence among countries, and countries often specify them according to specific practices. Therefore, in specific practice, judges often have greater discretion. In order to improve the clarity of legal application, legislators often use clearer definitions to express the meaning of uncertain legal concepts, so as to coordinate the conflict

of values between the flexibility of legal application and predictability. Generally speaking, different scholars have different views on the constituent elements of habitual residence: some think that the elements of habitual residence include the meaning of settlement and the fact of residence. [1] Some people also think that the requirement of habitual residence only requires the objective fact of continuous residence And living for a certain period of time is enough to meet the conditions.[2] Article 15 of the “Judicial Interpretation (1)” in China on the habitual residence: The place where the foreign-related civil relationship has been continuously lived for more than one year and is the center of his life when the foreign-related civil relationship is created, changed, or terminated, the people's court may determine as the natural person's habitual residence as stipulated by the Law on the Application of Foreign-related Civil Relationship Law. Except in circumstances. Among them, the unification of subjective and objective elements is included. The author believes that this is more conducive to the determination of habitual residence.

2.2.1 Period of residence

For the parties, it requires the existence of objective facts of residence in a certain place and a significant period of time to a certain extent. However, the specific standard for this element still needs to be formulated according to the specific situation in practice, so the standard belongs to the discretion of judges in practice. [3] To a certain extent, it fully reflects the flexibility of law application. In my country's judicial interpretation (1), the residence time at the place of habitual residence is stipulated as one year. The “one year” here means that the party has lived in a place for one year at the time of filing the lawsuit, not the one year in the future. It is the residence time that has occurred; and it is continuous residence. Of course, this “continuity” is a relative concept. Judicial Interpretation (1) lists three exclusions: medical treatment, labor dispatch and official service, because these three In this case, the residence time was interrupted because of an objective and compelling circumstance. In addition, cases in reality are diversified, and the residence period of “one year” is applicable to this situation, although it lacks flexibility, which also reflects that my country's “Judicial Interpretation (1)” pays more attention to the evaluable period, while weakening the ““Judicial Interpretation (1)” The value orientation of “life center” actually violates the substantive connotation of “habitual residence”. [4]

2.2.2 Living Center

The habitual residence is a newly introduced concept under the Law on the Application of Law. [5] Its establishment requires close contact with the parties, and must have a certain degree of residence objective facts. The place of habitual residence shall be the center of the party's interests and the most important place of life of the party. The center of the person's life should be judged according to the subjective living intention and the objective living period at the same time. [6] For the judgment of the living center, you can refer to such as the living environment, the party's employment there, establishment of This makes the habitual residence imply the intention and purpose of the parties to live in, but the practice in our country ignores the determination of the habitual residence only relying on certain living facts.

3. Reasons for the large use of habitual residence in the Law on the Application of Law

3.1 Legislative options to adapt to globalization trends

With the economic globalization, exchanges between countries are becoming more and more frequent, and the population movement between countries is accelerating. The simple nationality or the domicile of the parties is not the only life center of the parties. In this context, the habitual residence becomes the law Governing this part of the nationality and domicile does not apply to the parties' important choice for dispute resolution, and as a result, habitual residence has gradually developed into an important nexus in personal law. With my country, the connection point of personal

law has undergone a transition from single to plural in my country's private international law legislation. [7] Before the promulgation of the Law on the Application of Law, the connection point of personal law was domicile. After the promulgation of the Law on the Application of Law, the first choice for personal law is the place of habitual residence, and nationality and domicile are the supplements. [8] habitual residence is a manifestation of the localization of habitual residence in my country, [9] place of habitual residence and place of habitual residence are two different Chinese translations of the same word.

3.2 Unify legal terms in relevant laws and their judicial interpretations

The current norms of private international law in our country are not perfect, the meanings of the provisions are ambiguous, the concepts of legal provisions and legal provisions are inconsistent, and they are far from meeting the needs of the development of international civil and commercial relations. [10] In other laws of our country, for example, the General Principles of the Civil Law of the People's Republic of China promulgated in 1987 (hereinafter referred to as the General Principles of the Civil Law) and the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China in 1988. In the Opinions of the Civil Law (for Trial Implementation) (hereinafter referred to as the Opinions on the General Principles of the Civil Law), the meaning of "habitual residence" appears many times. In addition, the "General Principles of the Civil Law" and its related judicial interpretations define a citizen's "habitual residence" as a citizen leaving The place of residence where the place of residence lasted for more than one year continuously, except for hospitalization. Article 179 stipulates that the civil conduct capacity of Chinese citizens residing abroad shall be governed by the laws of our country if their actions are committed within the territory of our country; the laws of the country of their domicile may be applied to what they have done in the country of domicile. These vague and unclear concepts lead to numerous contradictions between foreign law and domestic law in practice. The adoption of "habitual residence" is conducive to the unification of such imprecise legal terms in relevant laws and judicial interpretations.

3.3 The habitual residence is highly operable

The habitual residence makes judicial practice operational. The determination of the domicile not only requires the fact that the person has lived for a long time, as well as the existence of nationality and domicile, but also the subjective meaning, but the determination of the habitual residence requires not so many conditions and restrictions, such as , for the trend that married women are allowed to acquire their own private residence and personal nationality, the adoption of habitual residence is more conducive to reducing the pressure on courts in practice, and can better resolve disputes between countries with different legal systems. Contradictions and conflicts at the nexus of personal law.

3.4 There is a close connection between the place of habitual residence and the parties

The habitual residence has a very close relationship with the marriage relationship, property inheritance relationship, creditor's rights matters and identity relationship between the husband and wife of the natural person. On the one hand, the personal physical maturity, the achievement of psychological cognitive ability, the capacity for civil rights and the capacity for civil conduct are closely related to the ethical and moral concepts and legal environment of the place where they habitually reside. a center of life. The close connection and rationality of the habitual residence make it applicable as a link for exercising jurisdiction and applying the law in foreign-related relations. Measures to ensure the stability of legal relations to the greatest extent possible on the basis of saving judicial resources.

3.5 The habitual residence is an inevitable choice for the development trend of personal law in private international law

The place of habitual residence was first proposed by the Hague Convention and applied as an internationally recognized new link of personal law. Article 5 of the Hague Convention on the Settlement of the Conflict of National Law and the Law of Domicile of 1955 states: "Domicile means the place where a person habitually resides, but it does not depend on the domicile of another person or the domicile of an authority", the domicile used in the Convention actually refers to the place of habitual residence. In essence, the place of habitual residence is the product of reconciling the conflict between nationality and domicile, and is promoted and advocated by the international community, and the domestic laws of various countries are gradually introduced. As far as my country is concerned, the Law on the Application of Law adopts the place of habitual residence as the primary connection point of the personal law of natural persons in my country, which is largely consistent with the development trend of personal law convergence. The connection between law and international law is higher.

4. Inadequacies of the Law on the Application of Laws regarding the place of habitual residence

4.1 The concept of "habitual residence" is still vague

Different from terms such as "habitual residence" in my country's "General Principles of Civil Law" and "habitual residence" in extraterritorial legislation, the Law on the Application of Law and Judicial Interpretation (1) although "habitual residence" is used as a link It is widely used and, to some extent, aligns with the term "habitual residence" commonly used in international legislation. However, it has not given an accurate and clear explanation of its meaning, [11] completely abandoned domicile and weakened the status of nationality. Moreover, although the connection point of "habitual residence" stipulated in the "Common Opinions" is only one word different from "habitual residence", the law is to pursue the rigor of expression, and a single word difference may also cause world-wide differences. do not. In addition, due to the vagueness of the concept, the term "habitual residence" has a very embarrassing status. It cannot be in line with international standards, nor can it be connected with domestic legislation, nor can it guide and guide judges in practice. Under the complicated situation where there is an accurate definition of "habitual residence", the direct application of the "habitual residence" may not be in line with my country's national conditions, resulting in extreme confusion in the application of the law.

4.2 The criteria for determining the place of habitual residence are ambiguous

The habitual residence is widely used in my country's "Law on the Application of Law" and is considered to be the primary and most important link of personal law, but the law not only does not clearly define its meaning, but also does not clearly define its specific criteria. ; Although the Interpretation of the Law on the Application of Law (1) stipulates the meaning of habitual residence, there are still no clear judgment standards in some aspects, as shown in: first, Article 15 regards "seeking medical treatment, labor dispatch and official duties" as Applicable exceptions for habitual residence. However, the Interpretation does not stipulate how the habitual residence should be determined under these circumstances; secondly, the Interpretation inherits the provisions of the General Principles of Civil Law and other provisions on the assessment period of "continuous residence for one year" in the habitual residence, but one year The assessment period may be too long and somewhat rigid, possibly at the expense of the flexibility of the law. Looking at the legislation and judicial practice of various countries in the world, it can be seen that most countries comprehensively consider the objective situation of each case, mainly including the actual residence and settlement intention for a certain period of time, but not only these two factors to determine whether the party constitutes a crime. Therefore, as long as the conditions and requirements after

comprehensive consideration of the objective situation are met, even a one-week residence can form a habitual residence.

4.3 The choice of only habitual residence is too single

The “Law on the Application of Law” widely uses the “habitual residence” connection point, which strengthens the flexibility of application, helps to overcome the inherent defects of nationality and domicile, and to a certain extent conforms to the trend of convergence in the development of international personal law. However, overemphasizing the place of habitual residence and promoting it as the primary connection point also lacks a certain rationality. [12]

First of all, from a development point of view, the future development trend of personal law must also be based on the principle of habitual residence, supplemented by the principle of domicile and nationality, to comprehensively determine the applicable law. [13] my country's “Law Application Law” completely eliminates the domicile and nationality as the link of the applicable law, and mainly uses the regular Place of residence, by contrast, most countries in the world use place of habitual residence as a secondary or alternative point of connection beyond nationality or domicile. This innovation is not in line with international practice.

Secondly, in practice, although the law of the place of habitual residence has great flexibility, it is not conducive to protecting the national interests of the country and the interests of its citizens. The adoption of the law of the country of nationality and the law of the place of domicile may be more in line with the actual national conditions of our country. Because the traditional law of the country of nationality and the law of domicile has its irreplaceable advantages, it can be seen from the provisions of the nationality convention and nationality legislation. my country is a country with a large population. Since the reform and opening up, the number of immigrants has been on the rise. There are tens of millions of overseas Chinese overseas. Applying the law of the country of nationality is more conducive to protecting their interests. In practice, on the one hand, the use of the law of the country of nationality as a supplementary link and the application of the law of domicile is conducive to determining the place of habitual residence and jurisdiction; on the other hand, the law of domicile still has practical significance for application : For example, in the Civil Procedure Law, the main basis for determining jurisdiction is usually domicile, and from the perspective of current practical needs, its application time is relatively long, and it is unreasonable to completely abandon it.

4.4 Inconsistent legal terms and inherent contradictions in the application of law

Before the promulgation of the Law on the Application of Laws, there were many laws and regulations in the current legislation that provided for the application of foreign-related civil and commercial legal relations. [14] As mentioned above, in addition to the “Law on the Application of Law”, which adopts “regular domicile” as the personal law nexus. The “General Principles of Civil Law” and its judicial interpretations and “Civil Procedure Law” all stipulate “habitual residence”, and this concept is still applicable today. From the definition of habitual residence in the Judicial Interpretation (1), it can be seen that this concept continues the time standard of “continuous residence for one year” of “habitual residence”, indicating that there is a certain connection between the two concepts.

Article 15 of the “Judicial Interpretation (1)” defines the subject of the habitual residence of the parties. The scope of application includes Chinese and foreigners in China (stateless persons), Chinese and foreigners in foreign countries (stateless persons), but each The determination of the habitual residence of the class subject varies. When the habitual residence may overlap with the domicile, not only the Law on the Application of Law, but also the domicile stipulated in the General Principles of the Civil Law and its judicial interpretations can be applied. That is to say, the criterion for determining this situation is the household registration place of the natural person. [15] At this time, a conflict of applicable laws arises. When the habitual residence and domicile do not overlap, should it be defined in accordance with the standard of “one year's continuous residence” in the “Common Opinions” or “the one who has lived continuously for more than one year and is the center

of his life” in the “Judicial Interpretation (1)” standard to define it? We don't know. Since there are certain problems in the existing legal provisions in our country, and the concept of habitual residence is a factual attribute, even though the original purpose of the “Judicial Interpretation (1)” is to guide judicial practice, it adopts the relative standard of habitual residence. Uniform measures cannot be defined specifically.

4.5 Legal persons or organizations should not apply the concept of “habitual residence”

Article 14 of the Law on the Application of Law stipulates that the habitual residence of a legal person shall be its principal place of business. However, personal law, which is only suitable for determining natural persons, does not apply to legal persons or organizations at all. On the one hand, as a fictitious legal person's personal law standard, there is no application of habitual residence at all. Generally speaking, the traditional connection point of the personal law of a legal person should be the choice of nationality and domicile; [16] On the other hand, the reason why the place of habitual residence is not a legal person is that although both natural persons and artificial legal persons are civil subjects, they are in the same position in civil activities. But the two are fundamentally different. For example, a natural person generally lives in one place and at the same time only needs to abide by the laws of one place; while a legal person generally engages in business activities in several countries due to its essential nature, and generates its business premises. It is necessary to comply with the laws of several countries or regions at the same time. With the rapid increase in the number of foreign-related cases, if there is no separate connection point suitable for legal persons, and in the application of law involving legal persons, the use of habitual residence as the connection point of personal law will inevitably appear more and more. question.

5. Suggestions on improving the relevant provisions on the place of habitual residence in the Law on the Application of Law

5.1 Reasonable definition of the meaning of “habitual residence”

First of all, “habitual residence” appears 44 times in the provisions of the Law on the Application of Law, which is the highest frequency among many connecting factors, but the law does not define its meaning. [17] When defining the definition, we must take into account the closest relationship Based on this principle, the author believes that the definition of habitual residence should be: when a foreign-related civil relationship arises, changes, or terminates, there is the intention of the party to live, a certain fact of residence has been objectively formed, and it is the center of the life of the party. If it does not require the time to reach a certain period, it can be regarded as the habitual residence of the party concerned, and exceptions such as medical treatment, public service, and labor dispatch are excluded.

Secondly, it is necessary to distinguish the relationship between the habitual place of residence, the place of habitual residence, and the concepts of habitual place of residence. In the English translation of the Law on the Application of Law, translated by the Law Translation Research Center of Peking University, “habitual residence” is translated as “habitual residence”, which is exactly the same as the English expression of “habitual residence” commonly used in the world, [18] so the definition of habitual residence should refer to the objective standard of “habitual residence” determined by the international community, On the one hand, it conforms to the value pursuit of habitual residence, which is the most important principle of the closest connection in private international law. On the other hand, it ignores subjective factors and makes the result easy to determine. Since the determination of habitual residence is primarily a matter of fact, all the factual circumstances of the case must be considered before a final conclusion can be reached. However, in the judgment process of specific practice, the intention of residence of the parties should be properly considered at the same time. Because when the objective elements are not available, the formation of the habitual residence can also be constituted by the meaning of residence.

5.2 Criteria for both flexibility and certainty

As mentioned above, the evaluable period of one-year continuous residence stipulated in the “Judicial Interpretation (1)” is too long and rigid, and there is no clear definition of what a “life center” is, nor can it be seen from the current judicial practice. However, it is certain that “judicial practice should not adopt pre-set and solidified standards for concepts that lack mature practice and theoretical discussion.” [19] In the field of personal law, due to the need to judge the personality and behavioral capacity of natural persons, it is necessary to The degree of connection with the location of the applicable law is relatively high; while in the fields of jurisdiction, contract, tort, etc., the requirements for the closeness of the connection between the natural person and the location of the applicable law are relatively low, which shows that in different civil legal relations, The degree of closeness of the connection between the natural person and the seat of the applicable law is not the same.

Therefore, it is suggested that on the basis of certain living facts, relevant judicial interpretations should be issued, and different civil laws should be applied by using the standards that meet the requirements. When determining the jurisdiction, the parties only need to stay in my country for a period of time, and do not necessarily have to have close ties with my country; when determining the habitual residence in the contract and tort legal relationship, in addition to the time requirement for stay, they must also engage in related activities. Activities that demonstrate participation in local life. In the field of personal law, the activities of the parties involved in life, study, social interaction, and business must all be related to our country. As long as they regard our country as the center of their interests and life, even if they only live in our country for a few dozen days, they can define my country as their habitual place of residence.

5.3 The choice of applicable law should be diversified

Nationality and domicile, as the link of personal law in a general sense, are still the choice of most countries in practice. Examining the legal provisions of various countries at home and abroad, we generally hold a negative attitude towards the single-choice principle on the determination of connection points, so as to avoid applying a certain connection point as the only connection point. First of all, since my country is still a developing country at present, in the determination of the connection point, our legislation must fully take into account the value inclination contained in my country's relevant policies and the relevant interests of the country. Secondly, my country is a big country of immigrants, with multiple jurisdictions, and there are many defects in the place of habitual residence itself. Therefore, the traditional connection points of nationality and domicile still have a certain living space in my country's reality. [20] Finally, from the perspective of the legislative trend and development trend of private international law, we should reasonably retain the traditional principles of law application, and should not give up domicile and nationality as a link for flexibility. It is also in line with the inevitable requirements of our country's reality.

Therefore, my country should formulate laws from the perspective of development in the legislation of personal law, and increase other options for personal law: increase the number and types of connection points. These junctions can choose applicability. For example, Article 22 of the Act. When there is no agreement, the applicable law cannot be determined, and the parties do not have a common habitual residence or country of nationality, the habitual residence of one spouse, the country of nationality of one spouse, and the place of court may apply. Therefore, when the parties do not have a common habitual residence or a common country of nationality, if there is no agreement to choose, the habitual residence or nationality of either party can be used as a supplementary link to choose and apply.

5.4 Issue judicial interpretations to resolve conflicts between old and new laws

Distinguish and clarify the concepts of habitual residence and habitual residence so that they can be linked in domestic legislation to avoid legal conflicts between the General Principles of Civil Law and the Law on the Application of Laws. For two different regulations, especially the General Principles of Civil Law and the Law on the Application of Law regarding the same situation but there

are different regulations, it is recommended to use the method of enumeration or generalization. Article 51 of the Law on the Application of Law shall be revised or re-clarified by issuing a new judicial interpretation, and clearly stipulate the applicable method provisions in case of similar conflicts in other fields, so as to facilitate judicial practice in the unified law. Operate in accordance with the guidelines.

5.5 Distinguishing between the personal connection points of natural and legal persons

As mentioned above, “habitual residence”, as the link of conflict of legal norms, applies to natural persons, but does not apply to legal persons, which should be determined separately for legal persons. It is suggested that the meaning of “habitual residence” of a legal person be explained separately. For a legal person, the place of habitual residence includes not only its principal place of business, but also other places with which it has the closest connection. The connection point of personal law of a legal person should be flexible, that is, as long as it is the place where the business activities of the legal person are carried out, it should be selected and applied as the connection point of the applicable law of the legal person. The author believes that the choice of the connection point of the personal law of a legal person should be based on the main The place of business is the main, supplemented by nationality, domicile, place of registration, and management center. If the main place of business is not optional, the supplementary applicable nationality, domicile, place of registration, and management center can be selected and applied. The specific circumstances may be negotiated by the parties.

6. Conclusion

The Law on the Application of Law cites the place of habitual residence and clarifies its status in my country's personal law. This legislative application based on my country's national conditions conforms to the development trend of personal law and is of great significance to the development of my country's private international law. significance. However, there are some deficiencies in the provisions of the Law on the Application of Law, which lead to many contradictions in practice. In view of these deficiencies, this paper proposes to promulgate new laws and related judicial interpretations, and then clarify their definitions and distinguish their concepts, so as to ensure that they can be connected with existing domestic laws, compatible with international laws, and further distinguish legal persons from natural persons. The rules applicable to the habitual residence, especially the habitual residence of legal persons should be diversified to ensure practical operability, etc. In order to play the greatest role of the place of habitual residence and further resolve the foreign-related civil legal disputes in our country, it is necessary to conduct constant discussions and investigations in practice.

References

- [1] Liu Yideng. Habitual residence: the inevitable choice for the convergence of personal law . Journal of Central South University of Technology.Vol.23(2002) No.03, p.302-304.
- [2] ChenWeizuo. Comparative International Private Law.Tsinghua University Press,2008,p.171-179.
- [3] Yu Fei. On the habitual residence in my country's international private law. Hebei Law. Vol.31(2013) No.12, p. 35-38.
- [4] Zhou Ying. The definition of habitual residence in my country's conflict of laws from the judicial perspective. Journal of Heilongjiang Provincial Political and Legal Management Cadre College. Vol.22(2015) No.01, p.135-137.
- [5] Xue Tong. On the habitual residence of a natural person. Research in International Law. Vol.02(2015) No.06, p.114-116.
- [6] Dong Lingli. On the application of habitual residence in my country. Journal of Liaoning Police College. Vol.19(2016) No. 01, p.19- 20.

- [7] Lu Qibing. History and development of the connection point of personal law. *Science and Technology and Economics Guide*. Vol.25(2017) No.21, p.135-140.
- [8] Hu Shudong. The historical development of the connection point of personal law and the choice of my country's legislative model. *Frontier*. Vol.34(2012) No.05, p.68-71.
- [9] Li Shuangyuan. Several issues on my country's Law on the Application of Law to Foreign-related Civil Relations. *Times Law*. Vol.14(2012) No.03, p.3-4.
- [10] DuHuanfang. Chinese-style selection, judgment and application of natural person's personal law and habitual residence: also commenting on Article 15 of the Judicial Interpretation of the Law on the Application of Laws for Foreign-related Civil Relations (1). *Jurist*. Vol.17(2015) No.03, p.134-159.
- [11] Zhao Ling. Analysis of "The Inadequacy and Perfection of the Rules for the Application of Tort Law in Foreign-related Civil Relations of the People's Republic of China". *Knowledge Economy*. Vol.14(2012) No. 20, p.45-54.
- [12] Ma Lan. Research on the personal law of natural persons in private international law.D, South China Normal University. China, 2015, p.23-45.
- [13] Wang Linhua. On the Personal Law of Natural Persons and Its Historical Development Trend. *Journal of Guangzhou University*. Vol.0(2002) No.04, p.65-71.
- [14] Du Xinli. From domicile, nationality to habitual residence—a study on the legislative change of my country's personal law. *Political and Legal Forum*. Vol.33(2011) No.05, p.26-29.
- [15] Du Huanfang. Chinese-style selection, judgment and application of natural person's personal law and habitual residence: also commenting on Article 15 of the Judicial Interpretation of the Law on the Application of Laws for Foreign-related Civil Relations (1). *Jurist*. Vol.24(2015) No.03, p.155-160.
- [16] Li Jie. Determination of habitual residence in the Law on the Application of Law to Foreign-related Civil Relations. *Journal of Suzhou University*. Vol.31(2016) No.04, p.44-48.
- [17] Tian Meng, HeQisheng. The definition of habitual residence in the law applicable to foreign-related civil relations. *People's Court Daily*. Vol.21(2012) No.07, p.1-2.
- [18] Feng Jing. On the habitual residence in the Law on the Application of Laws for Foreign-related Civil Relations. *Legal Expo*. Vol.29(2013) No.12, p.278-286.
- [19] Xue Tong. On the habitual residence as the center of a natural person's life. *International Law Research*. Vol.02(2015) No.06, p.112-125.
- [20] Huang Dongliang. my country's 2010 "personal law issues in the law applicable to foreign-related civil relations" . *Times Law*. Vol.13(2011) No. 04, p.100-103.