International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 8, Issue 11
November, 2021
Pages: 558-571

Comparison of Iranian Civil Law and International Law on Termination of Contracts

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http://dx.doi.org/10.18415/ijmmu.v8i11.3225

Abstract

The expansion of relations between countries has led to an increase in international transactions, and since trading and economic activity in general require special legal rules, in some cases, according to international transactions, the rules in the world's major legal systems enter the international arena. These rules have sometimes been agreed upon by countries to adapt to the needs of international trade by amending the relevant documents. In the present article, the research method has been library and also the collection of information has been descriptive, analytical and comparative methods. In the end, some rules can be obtained, including the rule "right of cancellation due to the anticipation of breach of contract" referred to in Article 72 of the Convention on the International Sale of Goods. According to this article, if it is revealed before the due date that the obligation will not be reasonably fulfilled, such as if the obligor declares that he will refuse to fulfill his obligations, the other party may announce his decision to terminate the contract by sending a statement. If the obligor refuses to provide an appropriate guarantee for the performance of the contract, the obligee will have the right to terminate the contract.

Keywords: *Termination; Actual Breach of Contract; Possible Breach of Contract; Guarantee of Contract Performance*

1. Introduction

Obligations in a general division are divided into contractual obligations and legal obligations. The reason for this is the difference in the source of the obligation. If a commitment is rooted in mutual consent and agreement, it is the "contractual obligation", but if the basis of obligation is a legislature's verdict, these requirements are called "out of contract (legal obligation)". (Katooziyan, 1989, p. 54) In all

valid legal systems, such a distinction is seen. In law, this division is also noticeable. The wise men are built on keeping the obligation when trading and to trust the commitment of their party, and on this basis to regulate their social and economic situation. Steadfastness in the covenant is necessary for trade and commerce. Therefore, "the purpose of the parties to conclude the contract is the fulfillment of that obligation by the parties. In all countries, this agreement has been given importance. It has been mentioned. In Iran law, agreements with respect to the parties (article 10) and the necessity of contracts (article 219) have been mentioned." (Mafi, first issue of 2011, p. 22)

When we move against these principles, the concept of breach of contract occurs. The Civil Code explains the concept of breach of contract under the effect of transactions. In the definition of breach of contract, it means that in fact a breach of contract is synonymous with its cancellation. However, the non-fulfillment of the obligation may be due to breach of contract and its violation by the obligor or due to a force majeure reason. Accordingly, non-performance of the obligation has a more general meaning than breach of contract, and mere non-performance of the obligation cannot be considered a breach of contract. "The term contract breach has been described in some legal cultures as: a breach of duty without a legal excuse for the performance of any obligation that forms part or all of the contract" (Campbell, Collin P. (1905); "The Doctrine of Anticipatory Breach", General Law Journal, vol. 60)

"Breach of contract or breach of covenant, as defined above, means the refusal of the parties to the contract to fulfill the obligations of the contract, and that is when a deadline has been set for the performance of the obligation arising from the contract, which is considered a violation of this term." (Shahidi, Tehran, 2003, p. 149) With this definition, we go to the cases of breach of contract. There are three examples of breach of contract, which are: non-performance of the contract, non-observance of the time of performance of the contract, defective performance of the contract.

2. Research Background

The subject of my article has been briefly and concisely stated in domestic and international jurisprudential and legal books with various expressions, but so far no significant work has been done independently in this regard. A useful article in this regard can be attributed to the "Right to terminate arising from the prediction of contract breach in the Convention on International Sale of Iranian Goods and Law" by Dr. Mansour Amini and Dr. Homayoun Mafi and Mr. Hossein Azami Charborj. And we can mention the article "Possible breach of contract in Iranian law with a view to the Convention on the International Sale of Goods and Foreign Legal Systems" by Mahmoud Kazemi. But this article will focus on the comparison of international conventions and Iranian civil law and will address various aspects of this issue.

3. Conceptology

In this section, we want to review some of the concepts as follows.

Termination in the word means violation, annihilation, ruin and breaking. "Voluntary termination or dissolution of the contract in terms of legal status is one of the issues causing the fall of obligations and contracts." (Shaygan, 1331, p. 22) "A contract or covenant is a binding agreement between persons that determines the rights and obligations of the parties. In legal interpretation, it is the agreement of two or more wills to create a legal effect" (Zarang, 2003, vol. 1, P. 237) In a simpler term, the contract is realized when the necessary intersection and conciliation of at least two wills are needed in order to create a legal effect such as purchase (sale), rent, etc. International law is a set of rules that are generally accepted in the relationship between states and between nations. It is a framework for conducting stable and organized international relations. "International law is different from government legal systems, as it is applicable to both countries, not for private citizens." (Zanjani, 1991, p. 66)

The Iranian Civil Code is the first codified law of Iran in a new style that "was compiled in 1919 during the reign of Ahmad Shah by Seyyed Mohammad Fatemi Qomi in a commission headed by him" (Bahrami Ahmadi, 2002, pp. 17 and 18)

4. Termination Of The Contract İn Iranian Civil Law

In the following, we will deal with the methods of compensating the damage caused by the violation as a guarantee for the execution of the breach of contract. Methods of compensation as a guarantee of contract performance are: performance of the same obligation, termination, right to imprisonment, price reduction and damages.

4-1- Executive Guarantee in Contracts According to Civil Laws

In this section, we want to deal with the executive guarantee in contracts based on Iranian civil law. First, the enforcement guarantee is the power used to enforce the law or court order. In other words, the performance guarantee is a direct or indirect means of fulfilling legal or contractual obligations or compensating for damages, which in most legal systems is rooted either in law or in a contract between the obligor and obligee. But the guarantee of performances that is rooted in the law are such as "the right to comply with the same obligation", which can be deduced from Articles 237, 238, 376, 476, 534, 579 of the Civil Code. It is a guarantee that the legislature has considered in order to undertake commitment and can force the offender to commit the obligation. Or the the options that legislature has considered in different times for the beneficiary of an option, upon which the obligee can terminate the transaction in order to prevent damages caused by the breach of the obligation." (Katooziyan, 2008, p. 254) "Another enforcement guarantee is the right to imprisonment, which can be used in all exchange contracts such as sale and marriage, etc., using the Commercial Code and Article 377 of the Civil Code" (Black Law Dictionary.Op .cit, contractual obligation)

And as long as the obligor has not fulfilled his obligation, the obligee can also not fulfill his obligation in return. In addition to these cases, we can mention the invalidity, non-influence of the transaction or compensation for losses in causation, including the guarantee of performances that are rooted in the law. For example, any contract or agreement with a court order that is the source of the obligation will be void if it does not comply with the law, but the performance guarantee, which is rooted in the agreement between the obligor and the obligee, is the performance guarantee that the parties to the transaction consider in their original contract. Such performance guarantees are effective when they are protected by law, so that the aggrieved party can use the public Cairo forces in certain cases to force the offender to fulfill an obligation or to compensate the damage.

One of the guarantees for the implementation of the contract is the "Performance Bond" contained in the contracts. So that in a commercial contract, a condition is usually included that "according to which, if one of the parties to the contract refuses to perform what the contract entrusts to him or undertakes an action that is prohibited according to the contract, he should pay the amount specified in the contract as damages to the other party" (Law made simple; CF PADFIELD LLB. DPA; Seventh Edition). This condition may only benefit one of the parties. For example, a seller undertakes to deliver the traded goods to the customer within a certain period of time, otherwise he will pay a certain amount to him. Maybe both parties are beneficial in the contract; for example, in a sale agreement that is subject to delivering several cars, it should be stated that each party should pay a sum of money as compensation to the other in case of breach of contract.

"The Guardian Council has responded to the payment of late payment damages for banks, and has announced the permission to receive late payment damages as a liability for banks in the inquiry theory." (Darabpour, 2007, vol. 3, pp. 165 and 166. "Performance Bond" is certainly valid in cases where the subject of the main obligation is cash. According to the application of "Article 230 of Civil Code", the

permission to receive compensation for late payment in the form of "obligation for banks" is not limited to banks. Because banks do not have the specificity of the case so that this license can only be applied to them. But is this "Performance Bond" also valid for obligations whose main subject is not cash but, for example, performance of work or abandonment of work, and is it subject to the "license" issued in the theory of the Guardian Council? In response, it can be stated that according to Article 230 of Civil Code and Article 386 which states: "If the merchandise is lost or lost, the transport operator will be responsible for its price ..." The parties can determine the amount of damage, less or more than the price of the merchandise. So it can be inferred that in this type of obligations and contracts, the inclusion of "Performance Bond" has no problem, especially considering the answer given by Seyyed Mohammad Kazem Tabataba'i to this question it can be inferred that it is also legal and jurisprudential to include the "Performance Bond" condition has no problem. It is to be mentioned that the Supreme Judicial Council in the statement dated 26/7/62 and 11/8/62 has confirmed the validity of the condition of "Performance Bond" (Sadeghi, 1998, p. 68).

Of course, the condition of the performance bond in the Iranian judicial method is also considered, regardless of the damage, and the judge does not have the right to change its amount. This method can be seen in the verdicts issued by the Supreme Court No. 2907/25/9/21 and 1450/3/9/29. "It should be noted that it is clear from the legal material and judicial procedure that the obligation and the performance of the original obligation can be demanded collectively, because the compensation for late payment can be claimed where the principle of the obligation remains and is applicable. (Safaei, 2008, p. 92)

Another guarantee of the performances that is included in the contracts and is common is the option of condition. Because the option of condition is a condition of the will of the parties. In other words, it is a right or option that appears as a condition during the necessary contract, according to which the beneficiary of right can use his right to shake the strength and stability of the contract. According to Article 226 of Civil Code, the condition of the option together with the payment of damages in Iranian law is a guarantee of very effective and efficient performances. If the will is not imposed, it will be subject to the general rules of compensation, but often in the contracts that are common for large projects, the provisions of the sample feedback contracts and the Management and Planning Organization contracts are included in these conditions.

However, in contracts that are especially common for construction and industrial projects, such as refinery or petrochemical projects, a condition is included as a liquidated damages due to non-fulfillment of the obligation or delay in its implementation, even in some projects, if during the bidding process, the bidder submits its manpower chart for the project, and introduces its key personnel, "Failure to adhere to this obligation, namely the displacement of key project personnel based on the tender documents issued by the employer, gives the right to employer to demand a liquidated damage concluded in the contract." " (Mafi, 2011 p. 45)

Iranian law, following the well-known opinion of Shiite jurists, has accepted and emphasized the method of compulsion to fulfill the same obligation. If it is possible to fulfill the same obligation, there is no way to terminate the contract. Because the contract concluded according to the law is binding between the parties and their representative and the fulfillment of the contract will be canceled only if the contract is terminated with the consent of the parties or be terminated for a legal reason. Article 230 of the Civil Code confirms this requirement: "Contracts not only oblige the parties to perform what is specified in it, but also the parties to all the results that are obtained from the contract according to custom or law."

In other words, "in case of breach of contract, he is required to fulfill it, and as long as there is no choice but to terminate it, this obligation exists. For example, if the seller delays in surrendering the goods sold to the buyer or the buyer delays in the payment of the price, the refuser is forced to surrender. "(Article 376 of the Civil Code). The same is the case if one of the parties refuses to fulfill its obligation, or fulfills the obligation incompletely, or delivers another product instead of the intended one, or avoids giving the information that should have been provided by the contract.

Similarly, if one of the parties to the transaction commits an act or abandon it, the other party to the transaction may request the court to compel him to comply with the condition. "If the obligor is unable to do so, there will still be no right of termination, and the ruler can, at the obligee's expense, cause the third party or even the obligor himself to do so," (Articles 237-9 of the Civil Code). "And if it is not possible to fulfill the same obligation in this way, as a last resort, the other party will have the right to terminate the contract" (Darabpour, 1998, pp. 131-134)

There is also a difference of opinion as to whether the contractor (in obligations in favor of a third party) has the right to compel the obligor to perform the same obligation. "In any case, it seems that according to the civil law, if the third party only benefits, such as the students' benefit from the dormitory, which was stipulated in the contract for the students in relation to the students" (Katoozian, 1999, vol. 3, pp. 412-414, and Safaei, 1972, p. 194) "An obligation has not been in his favor and he cannot ask for the fulfillment of the same obligation." (Shahidi, 2007, Pp. 100-109) We said that Iranian law, in general, has accepted the theory of coercion as much as possible and has made exceptions and adjustments in special cases.

In other laws, adjustments have been made in the obligations to perform a certain action. For example, Article 47 of the Law on the Execution of Civil Sentences has accepted the cost of executing a sentence instead of performing the same act. Also, in Article 34 of the Executive Regulations, the provisions of official documents have accepted three solutions: obtaining the necessary expenses for fulfilling the obligation, fulfilling the same obligation or terminating the transaction. Under article 29 of the same rule, "whenever the matter is executed and cannot be accessed or "committed" by obligor, the obligee can demand the price of the day. In other words, the same obligation is not necessarily fulfilled and instead some compensation is paid to put the obligor in a situation where it seems that the contract has been fulfilled." (Darabpour, 2001, pp. 197-200.)

4-2- Conditions for Payment of Damages in Case of Terminating the Contract in Iranian Civil Law

Payment of damages in Iranian civil rights in case of termination of the contract has conditions, which include:

A) The damages incurred in the event of a possible breach are not due to an unjust and detrimental refusal to perform the main contractual obligation, but due to an unjust and detrimental refusal to perform the sub-contractual obligations, which in most cases has no moral or spiritual justification.

B) The obligor must compensate for his shortcomings and negligence in the execution of the contract by prompt payment of damages. When he / she declares his / her non-compliance with the whole contract, it seems irrational to keep him / her committed to the date of the contract.

C) "Applying the rule is sometimes necessary to protect the obligee. It is possible that he would incur costs and pay in advance in order to carry out a pledge that would be made in the future and seriously incur losses in such a case, as it may not be able to contract by providing prepayment in advance.A claim for damages before the contract expires can provide this possibility."(Naeini,2009,p. 31)

D) Applying the rule leads to the speedy settlement of disputes and achieves one of the most important goals of the judiciary. In this regard, we should be familiar with similar cases of possible breach of contract in Iranian law and know that although Iranian law with terms similar to possible breach of contract, expected breach or hypothetical violation is alien, but with the induction in the laws, there are signs of this theory, the basis of which is the prevention of possible harm or repulsion of possible harm.

4-3- Transaction with the Intention of Escaping from Debt

Now we want to discuss the transaction with the intention to escape from debt, which is as follows:

According to Article 114, if the obligation is documented in an official document and has been subject to abuse, the obligee can request meeting his demand, even though the deadline for fulfilling the obligation has not come and the obligation is in the future. Also Article 218 prescribes repeatedly: "If the creditor files a lawsuit with the court stating that the debtor intends to sell his property in order to escape from the debt, the court can order the seizure of his property to the extent of his debt."

Some scholars believe that in interpreting this article, after stating that this article is not for sale and any transaction that endangers the debtor's property and ultimately leads to its transfer, is subject to this rule and the comparison of Articles 114 and 108 with the above-mentioned article, they conclude that "the provision stipulated in the Article 218 of the Constitution seems to be applicable even in the case where the urgent and documented request is a normal document" (Katooziyan, 1995, p. 133 and 134; Katooziyan, 2003, p. 212) Accordingly, if the behavior and actions of the obligor indicate the non-fulfillment of his obligation in the future, it seems that the obligee can prove the intent of the obligor to demand the provision and seizure of the obligee's property.

Although the term (potential breach) is not used in the analysis of these materials, the basis for accepting the right to request a claim against a deferred obligation that is likely to not be met at maturity is undoubtedly the same basis of the theory of possible breach that needs to be rejected or prevent possible damage.

"It seems that the provision provided in the above article is a guarantee that the obligee asks the obligor in case of possible violation to fulfill his contractual obligations with confidence." (Paragraph 3 of Article 71 of the Convention) It is a rational thing for the other party to fulfill its obligation and wait until the fulfillment of the other party's obligation, and at that time, by filing a lawsuit to invalidate the transaction with the intention of fleeing from debt, he will face many problems caused by it. It does not seem logical that the creditor could prevent the debtor from selling his property by proving that the debtor intends to sell his property before the transaction, but when the debtor made the transaction with the same intention and transferred his property to others, no longer he has a right, and by denying him the right to suspend or terminate the contract, we placed a burden on the injured party and oblige him to fulfill the obligation. (Shahidi, 2003, p. 14)

Article 533 of the Commercial Code:

According to this article, if a merchant has bought a property, and before the payment goes bankrupt and is unable to pay, the seller can refuse to deliver the goods to him.

Provisions of Article 533 is a figure of the right to imprisonment mentioned in Article 377 that is a general rule in all exchange contracts. The only difference between Article 533 and Article 377 is that for meeting the right of imprisonment in Article 377, the obligation of both parties must be present. While Article 533 is absolute and apparently includes any contract of sale, whether the goods or money are overdue or not. Dr. Shahidi mentioned the origin of the difference between the two articles in Article 421 and conclude that "if a deadline is set for the payment of money by the bankrupt buyer, the existence of a deadline will not prevent the seller from refusing to hand over the goods to the liquidator, because with the occurrence of another bankruptcy, no deadline is remained for the bankrupt debt." (Katooziyan, 2008, Volume 3, Page 41)

4-4-Guarantee for the Right of Termination in Iranian Law

Iran's trade law is currently on the verge of change, but violations of current regulations are still being addressed in the proposed draft in terms of the lack of diversity of tools to deal with possible breaches of contract and ways to deal with possible breaches. While it is time to separate commercial contracts from civil contracts and equip them with new tools. In any case, we must say that a possible violation has the effects of a real violation and deserves to be dealt with as a real violation. In this particular case, we must say that the possible breach of contract has the effects of real breach and deserves to be dealt with as a real breach.

In this particular case, the possible violation of contracts, we must say that dealing with it during their short life has always been one of the most controversial legal issues, as opponents of this principle have given reasons for it, which we will discuss briefly below.

Because if we want to guarantee the implementation of this type of violation, we must first know the opponents and their opinions. As we know, any contract, until it is dissolved for one of the legal reasons, has requirements that arise from the will of the parties, while anticipating a possible breach of contract allows one party to fulfill the obligation either true or false, this principle is known as the contradict to the principle of the necessity of contracts. On the other hand, there is the possibility of a breach, while the actual ability to fulfill obligations that have not yet been met has no meaning. (Rahimi, 2005, No. 14, p. 115)

However, according to the theory of possible breach of contract, as soon as a breach of contract occurs in the future and under certain conditions for the obligee, the right of termination is raised. According to popular theory in Iranian law, in the assumption of true breach of contract by obligor, the obligee should first ask his obligation to implement the obligation, then terminate the contract if it fails. In this case, it is more difficult for the obligee to accept such a right, assuming that there is no actual breach of contract and there is a possibility of breach of contract in the future. Although there is no general rule in Iranian law on the subject in question, but some examples similar to those mentioned in Article 72 of the Convention can be found in these laws. In civil and commercial law, there are cases in which the other party is given the right to terminate the contract after a person violates the obligation. Because it is reasonable to prevent future losses and create a balance point for the parties to the contract. (Maqdadi, 2005, p. 79)

Article 237 of Civil Code states: "..... the person who is obliged to fulfill the condition must fulfill it and in case of violation of the transaction, he can refer to the ruler and request the compulsion to fulfill the condition", "In drafting Article 496 of Civil Code, the authors of the Civil Code have been inclined to the view that the person in whose favor the condition is made can either demand the obligation to fulfill the condition or terminate the contract, and in paragraph (d) of Article 8 of the law on lessor and lessee relations, the same sentence has been repeated." (Katooziyan, 2008, vol. 3, p. 194).

Based on this, it can be said that the word (can) in Article 237 means that the person in whose favor the condition has been made has the right to terminate the contract or request the obligation to execute the same contract and be required the person to choose the obligatory way of obliging the wrongdoer first and then to enjoy the right of termination is the detriment of the person and unjust.

"In any case, accepting the right to terminate the contract on the assumption of breach of obligation by the obligor has many supporters in our legal system, and according to the legal authors, this theory also has many supporters in Islamic jurisprudence. We have not acted according to Sharia. "(Naini, 1979, p. 42)

The jurists have specified that the condition during transactions and also the option of violating it is a rational matter, and in case of violation of the condition, two rights are created for the benefited person, one is the right to enforce and the other is the right to terminate the contract without the latter. "Therefore, in Islamic jurisprudence, these two rights are mutually exclusive and in our subject law cannot be something else." (Sadeghi Neshat, 2009, pp. 312, 306 and 307).

Accordingly, if we accept the right of termination (without the obligation to perform and the many problems that follow), assuming that the condition of the act is not fulfilled in due time, it is easy to accept a possible violation if there is a strong possibility that it will not be possible in time. But if you do not agree with the above argument, it seems that with a broad interpretation of Article 240, the right of termination can be given to the injured party in terms of conditions whose fulfillment is refused after the contract. In the mentioned article, the legislator considers the coercion of the obligee to be useless and in fact excused, and considers the option of termination fixed for the obligor from the beginning regarding

the conditions whose fulfillment is refused after the contract. It can be said that the criterion for granting the right of termination is to obtain an excuse to fulfill the condition, whether this excuse is proven at the end of the condition or before the deadline, the impossibility of execution is proven and definite. "Accordingly, it must be said that the acceptance of the theory of possible violation is not in conflict with Article 237 of the Iranian Penal Code." (Olfat, 2012, p. 106)

5- *Termination of the Contract İn İnternational Trade Law*

Now we want to deal with the right to terminate contracts in international trade law:

5-1- Applying the Right of Termination as A Guarantee for the Actual Violation of the International Document Contract

Respect for contracts and observing their necessity in all legal systems, although it is a basic principle, but this category has taken on different meanings in different systems. In the Roman-Germanic legal system, the necessity of a contract is traditionally equated with the fulfillment of the same obligation. While in the common law system, especially in the field of international trade, due to the difficulties of fulfilling the same obligation, the concept of fulfillment of the promise has distanced itself from the fulfillment of the same obligation and has closed to the concept of fulfilling the contractual expectations of the parties. Therefore, if the normal and predictable profit of each of the parties is provided, the contractual obligations have been fulfilled and the necessity of the contract has been observed. Moreover, the difficulties of fulfilling the same commitment, especially in the field of international trade, are not hidden from the technicians.

Therefore, the goodwill statements of the obligor that he announces in advance, due to strike, war or sudden increase in raw materials, it is not possible to fulfill the same obligation, or due to changing economic conditions or for any other reason, he will not fulfill the same obligation and this should not be ignored in business rights. Notice of breach of contract will not only have legal implications, but the contracting party is likely to have legal obligations.

The idea reached the point that in the common legal system and consequently in the international sales regulations, the inability of the obligor to declare the inability to execute the contract is considered a kind of goodwill required to execute the contract. And they have prepared several means such as suspending or terminating the contract to deal with the possible breach.

"The theory of a possible breach of contract refers to a situation in which the obligor declares to the obligee that he will not fulfill his contractual obligations in due time or that the obligee inferred from the unsettled situation of the obligor that the contract cannot be performed for various reasons including a gross loss in the ability of the obligor or his bankruptcy." (Kazemi, 2012, first issue, spring and summer, p. 38)

Legal implications of anticipating possible breach in international law:

The United Nations Convention on Contracts for the International Sale of Goods, adopted in 1980, abbreviated to the International Convention on the Sale of Goods or the 1980 Vienna Convention (CISG), responds to the general need for international trade to establish uniform rules for the sale of contracts.

The importance of this convention is well understood from the long and continuous efforts of researchers and scientists from different countries. One of the important issues raised in the Vienna Convention on Joint Regulations is the possible breach of contract.

According to this theory, whenever the obligor explicitly declares before the due date or inferred from his words or behavior that he has no ability or intention to fulfill the obligation, a possible breach of

contract occurs. Accordingly, the discussion of applying this theory and the guarantees of breach of contract is presented by the obligee.

The theory of possible breach, which was first mentioned and developed in the common law system and is now one of the most important rules of international trade law (and accepted in many legal systems of the world), has many benefits and effects. When the seller of a commodity, which must be delivered to the buyer at maturity, stops his economic activity, production and selling his factory, the buyer must have this right to buy from third parties in order to prevent the increase of losses due to price fluctuations in the market.

Also, when the buyer announces that he will refuse to take the goods or pay the price, the seller has the right to stop making the ordered goods or not to send them to the buyer or to sell the goods to third parties. This possibility causes the party to the contract to get out of uncertainty and instability and worries in the future caused by the possibility of breach of contract by the other party. In addition, the possibility of buying alternative goods and concluding a new contract with a third party seller (if it violates the seller's contract), or reselling the goods to a third party (if it violates the buyer's contract), provides the possibility of more circulation of goods and capital in the community and planning on business activity has contributed to the boom of trading and economic prosperity.

"Termination is the heaviest guarantee of enforcement of a law, the disclosure of which depends on specific circumstances and considerations in terms of the strength of the transaction. In England law, the United States Convention on the international sale of contracts, the European principles of contract law, the international law on the unification of private law has defined the severity and lightness of the effects of the violation as a criterion for the exercise of the right of termination. And in relation to possible breaches of the contract, lack of readiness and willingness to execute the contract if it is related to non-compliance of basic part or important conditions, it will entail the right to terminate the contract. "(Hemmatkar, 2005, p. 89)

Thus, in general, the established rule in American and British law is that a party's right to consider the contract terminated is possible in two cases. First, when one party to the contract commits a fundamental breach, and second, when a party rejects the contract prematurely.

5-2- Anticipatory Breach of Contracts in International Trade Law

The English term Anticipatory Breach literally has been translated as possible breach (predictable breach), (presumption breach) and (breach in advance). "Some people, because the possibility of such breach has passed from the stage of doubt and probability, do not consider it as a mere hypothetical violation and have interpreted such violations as (expected violations)." (Darabpour, 1991, P. 27)

In legal terms, whenever before the time of fulfillment of the contractual obligation, the obligor declares that he will not fulfill his contractual obligations in due time, or signs of inability or unwillingness of the obligor to perform the contract is seen, if this unwillingness is serious enough, the breach of contract at the due date (deadline) by the obligor can be predicted. "Accordingly, what is considered as a possible breach of contract means that before the due date, the obligee predicts that the obligor will not fulfill his obligation" (Rahimi, 2005, No. 14, p. 115). In other words, after concluding the contract and before the due date, it should be clear that one of the parties will not fulfill its contractual obligations in the future.

In this case, if this theory is accepted, the obligee, who had to fulfill his obligation before the obligor, has the right to terminate the contract or suspend the fulfillment of his obligation. A possible breach of contract is conceivable, both explicitly and implicitly, when the obligor declares that he will not fulfill his contractual obligation at the time of performance of the contract, it is an explicit breach. But if someone promises to sell something to another before a certain date, there is an implicit breach.

Thus, it can be said that breach of contract is a general concept and may occur before, at the same time or after the contract. While the real breach of contract is related to the non-fulfillment of the obligation in due time and the possible breach of the contract is related to the non-fulfillment of the obligation by the obligor before the time of its execution.

5.3 The Right to Terminate a Contract Under International Law

In this section, we want to address the right to terminate a contract under international law.

The Vienna Convention, in addition to providing for the right of suspension under certain conditions, also allows for termination in certain cases. Since the termination of the contract is against the rules and principles, the granting of this right, even before the occurrence of a fundamental violation, must be accompanied by sensitivity. This right should be considered as a situation where one of the parties to the contract concludes with justified reasons that the other party is seeking actions that are considered a breach of contract.

"In this case, the aggrieved party can, for example, invoke the termination of the contract, buy the product from another index, or sell the product to a third party." (Niemeyer, 1993, p. 470) Since Article 71 of the Convention (the right to suspend the performance of a contract) cannot provide sufficient protection in cases where a possible breach is of a fundamental nature, so the Convention has granted the right to terminate the contract in some cases to protect the interests at stake. Article 72 of the Convention is set out in three paragraphs, each of which sets out rules regarding the exercise of the right of termination. And in exercising the right of termination resulting from the anticipation of a breach of contract under Article 72 of the Convention, it is necessary to recall points.

Firstly, because the criterion for exercising this right is the assessments and predictions of one of the two parties to the situation of the other party. This calculation and prediction must be based on realism and, rather than using internal criteria, external criteria are cited. For this reason, paragraph 1 of Article 72 of the Convention explicitly states that it is clear that there is a fundamental violation. Secondly, if the user of the termination right in his personal assessment has not met a reasonable use of external criteria and as a result terminates the contract without any reason and on the basis of a false suspicion, in addition to being unable to rely on the Article 72, he may have committed a fundamental violation, thus "He makes the right to terminate for the other party." Thirdly, if the holder of the right of termination does not terminate in spite of the conditions for termination and significant damage is caused to him in the future, it does not seem that all these damages can be attributed to the fundamental violator of the contract." (Darabpour, 2013 vol. 3, P. 98)

Pursuant to Article 72 of the Convention, three conditions for the termination of a deed can be invoked, as follows: In the first condition, the violation must be clear: Paragraph 1 of Article 72 of the Convention states, as the first condition, that the party intending to declare termination must ensure that the other party commits the violation. "If we care about the provisions of Articles 71 and 72, we find that if the phrase is clear, it is used in Article 72, while if it is clear in Article 71, it has been used. This implies greater certainty that the application of Article 72 needs greater trust than what was required for the application of Article 71 of the Convention." (Enderline & Maskow, 1992, p. 291)

In the meantime, it should be noted that predicting the breach of contract, except when there is an explicit statement by the obligor, is an assumption that is based on objective criteria. Article 72, unlike Article 71, does not list the cases that give rise to the right to suspend a contract. But it can be said that an event leading to a fundamental breach of contract may be similar to Article 71 of the Convention. Through gross violations in the ability of the debtor to implement the contract, or in his credit, or in consequence of his conduct in the preparation of the contract, or as a result of other circumstances that are not explicitly embodied in the text of the law.

Next, we come to the second condition for termination of the contract. This condition, which is known as the investigation of a fundamental breach, indicates that the breach of a part of the contract will

not be sufficient and necessary for termination. But according to Article 72 of the Convention, this breach must be substantial. As in paragraph A of Article 49 of the Convention regarding the right of termination for the customer and also like this regulation in paragraph A of Article 64 of the Convention for the seller, a fundamental violation has been mentioned.

Article 25 of the Convention defines a fundamental breach as follows: A breach of contract by a party is a fundamental breach when it results in such damage to the other party that he or she is substantially deprived of what he or she was entitled to expect under the contract. Unless the party who committed the breach of contract did not anticipate such an outcome, and a normal person like him in similar circumstances could not have anticipated it.

Thus, "Article 25 of the Vienna Convention considers a violation to be fundamental when it has two conditions: the infliction of material harm on the interests expected of the other party and the predictability of harm" (Carr, Indira (2005) "International Trade Law", 3rd edition) It should be noted that in addition to the above, it seems that in order to exercise the right of termination mentioned in Article 72, the incapacity of the obligor must appear after the contract.

Third reason for termination to be accepted as a guarantee of a contract in an international convention is to give notice of intent to terminate the contract. The second paragraph of Article 72 of the Convention provides that, if time allows, a party wishing to declare the termination of a contract must give a reasonable notice to the other party to enable him to provide sufficient guarantees for the fulfillment of his obligation. Thus a warning is necessary when time permits.

In this regard, some believe that when there is no opportunity for notification and the delivery time is so limited that the guarantee cannot be provided in a timely manner, a warning is not necessary. The notice referred to in Article 72 allows the obligor to have the opportunity to provide sufficient guarantees for the fulfillment of his obligation. I should add that giving a warning is in the interest of the parties because when the obligee gives a warning to him, in fact, he shows his goodwill and at the same time, "if the obligee is sure of violating the contract in the future, he will not have to wait until the contract is executed. In this way, the damage that will be inflicted on him as a result of non-performance of the contract will be prevented." (Azeredo da Silveira, Mercedeh (2005) "Anticipatory Breach under the United Nations Convention on Contracts for International Sale of Goods", Nordic Journal of Commercial Law.)

Now we come to the main issue namely the termination of the contract in the principles of international trade agreements. Pursuant to Article 3-3-7 of the Principles of International Trade Agreements, the other party may terminate the contract if it is clear before the date of performance of the obligation by one of the parties that the non-essential performance of the obligation will be realized by that party. In this article, the non-fulfillment of the expected obligation is equivalent to the non-fulfillment that has been realized at the time of execution.

The main provisions of this article are similar to the main provisions of paragraph 1 of Article 72 of the Convention. Obviously, the drafters of these principles have taken steps in accordance with the Vienna Convention. Because "if it is clear that one party will commit a fundamental breach of contract, it does not make sense to require the other party to award the contract." (Chngwie, 2003.No9.6.1) If the basic execution of the contract becomes impossible, even if such failure is the result of circumstances beyond the control of obligor, the non-performance in such circumstances is still considered a breach of contract.

Based on paragraphs 2 and 3 of Article 72 of the said Convention, a party intending to declare termination is obliged to give a normal notice to the other party if the time is appropriate. Whereas Article 3-3-7 of the Principles of International Trade Contracts does not require such formalities.

Conclusion

1-The main topic of discussion is the termination of the contract in the principles of international trade agreements. Pursuant to Article 3-3-7 of the Principles of International Trade Agreements, the other party may terminate the contract if it is clear before the date of performance of the obligation by one of the parties that the non-essential performance of the obligation will be realized by that party. In this article, the non-fulfillment of the expected obligation is equivalent to the non-fulfillment that has been realized at the time of execution.

The main provisions of this article are similar to the main provisions of paragraph 1 of Article 72 of the Convention. Obviously, the drafters of these principles have taken steps in accordance with the Vienna Convention. Because "if it is clear that one party will commit a fundamental breach of contract, it does not make sense to require the other party to award the contract." (Chngwie, 2003.No9.6.1) If the basic execution of the contract becomes impossible, even if such failure is the result of circumstances beyond the control of obligor, the non-performance in such circumstances is still considered a breach of contract.

Based on paragraphs 2 and 3 of Article 72 of the said Convention, a party intending to declare termination is obliged to give a normal notice to the other party if the time is appropriate. Whereas Article 3-3-7 of the Principles of International Trade Contracts does not require such formalities.

2- However, in the articles of the Civil Code and the Commercial Code of Iran, there are signs of this institution (Articles 237, 238, 530, 533 and Article 380 of Civil Code). It seems that the basis of all the above materials is the solidarity and interdependence of the two. In fact, the real motivation of each party in concluding the contract is to obtain the other's obligation, and if one of the two loses the ability to fulfill its obligation or it becomes clear that he will not fulfill his obligation, it is natural that the other obligation must also be dissolved. And in this regard it does not matter whether the obligor fails to perform the obligation at the time of performance, or before. Perhaps if it is before and the obligee is satisfied with the termination of the transaction, respect for the discretion of the injured party in self-defense, as well as avoiding wasting time and property and observing the principle of speed in business are factors in accepting the theory of possible breach of contract. In French law (as a system of written law), legal writers from Article 1613 of Civil Code that is about the right to suspend the execution of the contract due to the risk and the possibility of non-fulfillment of the obligation of the other party (due to bankruptcy, etc.), the provisions of the possible theory have been inferred at least in the guarantee of execution of the suspension. The precondition for creating a suitable ground for accepting the theory of possible breach of contract is that we should not always consider the interest of the obligee and the observance of the economic interests of the parties in the implementation of the same obligation.

3- Now that the laws of Iran do not explicitly mention the theory of possible breach of contract and guarantee of its performance, and assuming that there is no condition in the contract, it can be justified on the basis of violation of the implicit condition. That is, there is an implicit condition that the contractors, even before the due date of the obligation, consider themselves obliged and loyal to the obligation and its fulfillment in due time, and must prepare the ground for it and the parties should not take action to the detriment of the other party. So if one of the parties announces previously that he will not perform his obligation, or by not making the necessary arrangements, he will practically deprive himself of the possibility of fulfilling the obligation on time, violate the implicit condition, and the other party will have the right to terminate it based on violation of the condition. With this analysis, based on the violation of the implicit condition, the right to terminate the original contract is created, which is the guarantee of committing a possible violation, and the results are obtained. In any case, in order to resolve any differences on this issue, it is necessary to amend the existing laws, adopt appropriate laws and, of course, accede to international regulations, especially the Vienna Convention and participate in world trade, in order to expand Iran's international prestige and country’s economic and trade development to adapt the domestic regulations with commercial requirements.

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