

Effects and consequences of termination of contract in Iranian law

Mohammad Reza Marandi^{1*}, Payman Homayonnia²

¹PhD of International Law, Faculty member of Islamic Azad University, Garmi Branch, Iran

²Student of Private Law, Islamic Azad University, Garmi Branch, Iran

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ABSTRACT

Objective: Contract termination due to the options, is one of the sanctions that dealers can refer to it to get out of the contract and the obligations arising from it and as it is considered one of the causes of the fall of the obligations. **Methodology:** Contract termination will have certainly effects. In Iranian civil law, there are no articles or topics that explicitly express termination effects, but due to sporadic and transient discussions in law, it can be considered two major effects for termination relating to the effects of termination: 1. The dissolution of contract, 2. The possibility of demand compensation in the case of contract termination and 3. Extradition of considerations. **Results:** In general, what is important in the dissolution of contract, which is considered as the first effect of termination is, knowing the time of dissolution of contract, impact or non- impact of it on the possessions prior to termination and future commitments of the dealers; there is this general rule in Iranian law in the part of claim for damage in the case of termination of the contract that If damage occurs to covenantee in the case of not doing commitment, he can demand it from covenantee and in the discussion of extradition of considerations to their owners that is the third effect of termination, it is investigated to how extradition of considerations and benefits of it in types of possessions of dealers, prior to termination. **Conclusion:** Termination in words means violating, undermining, and destroying and breaking and it is also called the voluntary dissolution of contract. Termination in legal term is the legal terminating of contract by one of the parties or a third party. Termination or voluntary dissolution of the contract in terms of legal status is including subjects of obligations fall and contracts and it will be discussed in the general rules of contracts.

1. Introduction

One of the legal certainty principles that is accepted almost in most legal systems of world with slight differences is the "principle of necessity of contracts", this principle in Islamic law, rule of "Asala Al-Lozum", is considered one of the famous rules of jurisprudence and many jurists consider the base of this rule the verse "Ofu Bel-Oghud" (Ma'ideh, Verse 1) and it is referred to Articles 10 and 219 of the civil code in expressing the principle foundations mentioned in Iranian law regardless of the theoretical disputes between lawyers, meaning of the principle in a simple language is that when the parties of a contract attempted to conclude a contract by considering procedural and substantive conditions, principally bound to the commitments that undertake according to the contract and in the case of violation of any of dealers, the other party can claim "implement the same commitment" or compensation for damages caused by the violation of contract using various strategies that is accepted in the legal system of any country, a great economic and social interest supports this legal principle, however, there will be cases which emphasizing the continuing necessity of contract and insist on implementation of its provisions for several reasons seems canceled and vain issue and the person will be allowed to cancel the obligation due to contract for his benefit and to be relieved of commitments due to contract or in other words, "terminate the contract". Contract termination due to the options, is one of the sanctions that dealers can refer to it to get out of the contract and the obligations arising from it and as it is considered one of the causes of the fall of the obligations.

* Corresponding author: MohammadReza.Marandi@gmail.com
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In International Sale Convention of Goods of 1980, the cases of termination of the contract of sale from the seller and buyer respectively, in Articles 49 and 64 is expected, the discussion about the seller or buyer under what circumstances has right to declare the termination of the contract of sale is done in domestic writings, whether legal or judicial sources as well as in foreign books as detailed and comprehensive, but still there are many uncertainties about investigating and recognizing, the effects of termination of the contract on the relations of parties, investigating the legal relations of parties after the termination of the transaction and their rights and duties in this period, and each beneficiary tends to be known before the announcement of the termination of the contract that what will be the fate of the deal after the contract termination? So in this paper, effects and consequences of termination of the contract on parties' relations in the Iranian Law are investigated.

2. Materials and methods

2.1 Analysis of the contract concept

Contract is literally, tying, tightening covenant and means covenant (Amid, 2008) and legally and in accordance with Article 183 of the Civil Code, contract is that one or more persons against the other one or more persons commit on a contract that is acceptable to them. This definition can be applied to the contract and be correct if we say: The contract is that one or more persons against the other one or more persons commit on a contract that is acceptable to them. In addition, in Article 184 of the Civil Code, we read that contracts and transactions are divided to necessary, permissible, optional, and definite and suspension. According to Article 10 of the Civil Code, private contracts than those who have signed it if it is not contrary to the law is valid. To prove this interpretation, we refer to Article 13 of the law of civil procedure that says in commercial disputes and claims relating to movable properties which are derived from contracts, plaintiff can go to a court that the contract is located in its area or commitment must be done there (Hoseini, 2002).

2.2 Analysis of termination concept

Termination in word means violation or opening (Ibn Manzur, ١٩٧٧) In legal terminology, it means ending the existence of contract by the will of one of the parties of contract or third person. Termination is a legal action that is done with a will and it is considered the unilateral legal act (Article 449 BC). Termination is the financial right basically that is created by law or stipulating parties in contract and in order to avoid the loss of regret and for each of the dealers or third or both of them and its owner has the right to dissolve the contract unilaterally and end the legal existence of contract (Nahreini, 2014). In accordance with Article 219 of the Civil Code, contract between the parties is binding unless both sides together make it or one of the parties terminates it due to legal reason. All topics of terminating contract are not in civil law and legal articles about it is scattered and this means the necessity of discussing the contract termination. In terms of nature, option is a right that the two parties or one of them and sometimes third party has the power to terminate the contract. Apply this right is a legal action that is done with a will. It is necessary to be written and it is in the field of unilateral legal act. Unlike bilateral discharge that is done by consent, inward will and enthusiasm of terminator according to some lawyers not has any effect, his decision must be declared and outer and material face should be clear although the other party of contract not to be aware. Inner and inherent will of beneficiary of an option actually is his intend to dissolve the contract that is enough to achieve the goal (Katuziyan, 2005).

A) parties agreement: the parties of contract can make right to terminate while contract or out of it for one or both parties or third party, as someone sells a car to another and on the condition that each of the parties or third party any time they wish, they can terminate the transaction within one month, this right is called option of condition. As mentioned in Articles 399 and 400 of the Civil Code

B) the direct rule of law: the law in some cases to prevent the inadvertent loss of the contract for one of the two parties, directly gives him right to be able to prevent the mentioned loss by terminating the contract, like one rents houses and after a while considers that residence is not possible there that to cite Article 478 and 479 of the civil Code, he has the right to terminate the rent contract (Jahani, 2002).

3. Discussion and results

3.1 Effects of termination of the contract

3.1.1 termination of the parties' contractual relationship

The common effect of all cases of termination of contract is the completion of the contractual relationship and both sides release of the duties and obligations due to the contract, the parties may have duties but the duties are not due to a contractual relationship. The same effect is in the detail termination of the contract however; the parties to the termination release of commitments that its example can be considered discrimination option of bargain and annulment of the contract (Katouzian, 1984).

In Iranian law, there is no legal provision which refers to the principle, but this effect can be deduced from the provision of the termination. And the effect is refereed in the Articles 387 (waste of sale before the bill), Article 397 (option of meeting place), Article 398 (option in sale of animal), Article 402 (option for delayed payment of the price), Article 410 (option of inspection and incorrect description), Article 416 (option of lesion), Article 422 (option of defect), Article 428 (option of decite) and Article 441 (option in sales unfulfilled in part).

3.1.2 The possibility to claim damage in the case of termination of the contract

In cases that one of the parties of sale, according to one of the legal options and to prevent his losses acts to terminate the sale contract in fact, he takes the simplest and most effective step in order to preserve his interest and escape the adverse situation arising from the contract but the subject always has not been easy and the termination of contract may not be enough to compensate of beneficiary of an option and maybe that person lost the valuable opportunities of deal with another and due to inflation and increase the price will be forced to purchase the material several times of the previous price.

There is disagreement among the lawyers and the laws of different countries in that is there the possibility to claim damage from parties in the case of termination of the contract or the parties not have any claim for damage by terminating contract (Hesarbani, 2007).

In terms of some rules, termination of contract prevents the claim of damage and two kinds of damage are not possible. The parties can terminate the contract or claim damage (Darabpour, 1995). But this view is rejected because first claim two damages, each of which have different origins is no problem for example, the origin of a damage is for contract and the origin of the second damage is non-contractual, claim two damages is legitimate. And secondly, even if the source of two damages is contractual relationship, it is no problem because the legislator's aim is to the parties position after the cancellation or termination of the contract returns to before contract and if still damages remain by the termination of the contract and we say the party has just the right to terminate the contract this means that the goal of the legislator still has not been provided and even opposed to justice which is the ultimate goal Civil Code (Rahmani Manshadi and Rahmani Manshadi, 2015).

Researcher suggests that termination of contract not prevents claim for damages and we review this view in laws.

In Iranian law, the general rule is that if damage occurs to covenantee in the case of not doing commitment, he can demand it from covenantee because the source of the damage is that covenantee in the time required not does his commitment and according to rational rule, anyone who damage other should compensate. The legal articles confirm this presumption that states if a person does not fulfill his obligation, he must pay compensation of contract and considering the articles 237, 238, 239, the Civil Code include cases that even intend to terminate or terminate the contract (Kazemi, 2003).

Article 221 of the Civil Code: "If someone is committed to do an action or committed to refrain from doing something, in case of violation is liable for damages of the other party, provided that the compensation is stipulated or obligation is as stipulation or based on the rule of law, it causes liability."

In addition, Article 226 of the Civil Code, "about the failure to comply on commitment from one of the parties, the other party cannot claim damage unless a certain time is required to fulfill the obligation and the mentioned period to be expired and if no time is stipulated to meet the obligation, the party can claim damage and prove that he has claimed the commitment. "

Article 391 of the Civil Code provides that: "In the case of belonging to other person in all or some of the sale, the seller shall be refunded the price of sold goods and in the case of the customer ignorance to corruption; the seller must pay the compensations on the customer."

The rule of this Article is in guarantee to indemnify and arises where the sale is the other property and owner not confirms the sale contract and therefore the sale contract is canceled and perhaps the analogy of this Article seems wrong about terminate the transaction in this respect, but the wisdom of this article is the same with termination of contract due to violation of any of the obligations of the contract ie as in any contract that is condition implicitly or explicitly that sale is safe and price of transaction is balanced and proportional and the seller not misrepresents and adheres to the condition stipulated in the contract, this implicit condition is also deduced that seller to sell his property to other and selling another person's property without a license is against the law and committed must be able to cope with the damage caused by his action especially in terms of the convention, belonging to another person of sale is considered a kind of legal mismatch of goods and causes the right of cancellation of buyer, the result is that in Iranian law, if one of the sellers do contrary to the provisions explicitly or implicitly stipulated in the contract and the other party has to terminate the contract, the termination of contract not deprives him from claim of any damage that has conventional causal relationship with the violation of other party of contract.

Not thought that the rule in this Article is a particular and special rule of certain cases in Articles 384 and 385 of the Civil Code and this rule can be generalized to similar cases, which terminate the sale contract to one of the legal causes, of course it is obvious that option of condition has a different situation because in the option of condition, beneficiary of an option can have the right to terminate it so after the termination, the damages does not seem to be claimed but about the defect option or defect or lesion that as a result of ignorance and carelessness imposed upon him, the buyer after the termination will have the right to claim damage however, depriving the beneficiary of an option from the right to claim damage and satisfied to terminate the contract is an indecent and improper procedure in judgmental procedure that is not based on any legal and juridical solid foundation.

3.1.3 Extradition of considerations

The second effect of the termination of the sale contract is to return the effects of contract to the first case. If all or part of the contract has been executed, the parties must return to the opposite side of what they have received.

In Iranian law, it is not referred to how extradition of considerations after termination however, Article 377 of the Civil Code could be useful, this Article stipulates that "every seller and the customer has the right to refrain surrendering the price or sale to the other side surrenders, unless the sale or the price is delayed in this case, each of the price or sale that is present must be submitted."

The Article, however, is about sale but contract of sale not has special features but the principle can be considered in all commutative contracts. About the termination of contract, each of the parties of contract terminated has a duty in front of the other side; fairness dictates that as we consider the right to terminate about implementing the contract, we also consider the right to terminate about the obligation of parties after termination based on extradition of considerations (Sha'bani, 2000).

But if none of the parties is present to implement his obligation and subjects his fulfilling obligation to other party to perform obligation in this regard, the Convention not pondered the measure. It seems that in this case it should be referred to domestic law. In Iranian law, there is no legal Article in the regard. Jurists disagree in this regard, however, it seems if both sides want to force another from court and both parties refer to the right of prison, it should be forced both sides and at the time of execution, price is given to seller if he is given the sale to representative of the court (Katuziyan, ۲۰۰۹).

It should be noted that the bankruptcy of one of the parties may be caused the extradition faced with trouble. In this case, extradition procedure and, in general, various techniques that exist for such situations is function of general rule, as a general rule, all legal systems give the additional period to the debtor or reduce the amount owed, and they also refuse extradition (Darabpour, 1995).

4. Conclusion

Termination in words means violating, undermining, and destroying and breaking and it is also called the voluntary dissolution of contract. Termination in legal term is the legal terminating of contract by one of the parties or a third party. Termination or voluntary dissolution of the contract in terms of legal status is including subjects of obligations fall and contracts and it will be discussed in the general rules of contracts. Subject of termination of contract is specific for necessary contracts because in the permissible contracts each of the parties can disrupt the contract any time that wants. In accordance with Article 219 of the Civil Code, contract is binding between the parties unless both sides together annul or one of the parties terminates it due to law. All topics of terminating contract are not once in civil law and legal articles about it, is scattered and this means the necessity of discussing the contract termination. In Iranian law, the legislature not allocated certain Articles to effects of termination. In general, in the various Articles that investigate termination of contract can be considered including effects of termination, dissolution of the contract, the possibility of claim of compensation in the case of termination of contract and extradition of considerations.

REFERENCES

- Amid, H. 2008. Amid Persian dictionary, Tehran, Amir Kabir Publications
- Darabpour, M. 1995. Law of international sale, Volume III, Tehran, Ganje Danesh.
- Hesarbani, Z. 2007. Descriptive Assessment of New Model in Educational Assessment.
- Hoseini, A. 2002. Creative Thinking: The Ultimate Goal of Education, [Tehran], February.
- Ibn Manzur, M. 1988. Arabic language, Beirut, Dar Ahya Altaras, First Edition.
- Jahani, J. 2002. A Review on the Philosophical Foundations of Mathew Lemene Educational Model for Critical Thinking, Quarterly Journal of Humanities Scientific-Research, Alzahra University, Summer.
- Katouzian, N. 1984. Civil rights of certain contracts, the first volume, Tehran, Behnsr publications.
- Katuziyan, N. 2005. The general rule of contracts, vol. 5, the dissolution of contracts and options, Tehran, Bahman Borna publications.
- Kazemi, Y. 2003. A Guide for Descriptive Assessment, the Office of Academic and Educational Assessment.
- Nahreini, F. 2014. Nature and consequences of termination of the contract in Iranian law, Tehran, Ganje Danesh publicatuions.
- Rahmani Manshadi, M. & Rahmani Manshadi, H. 2015. The effects of termination of the contract, the first International Congress of Iranian law, Tehran, Iran's development Convention Center.
- Sha'bani, H. 2000. The Impact of Teamwork Problem Solving on the Critical Thinking and Educational Achievement of Primary School Students in the Fourth-grade in Tehran, Ph.D. Thesis, Teacher Training University.

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