

Comparative investigation of the contractor's civil liability in employment contracts in Iran and France's laws

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ABSTRACT

The present study aims at comparative investigation of the contractors' civil liability in employment contracts in Iran and France's laws and it has been conducted based on a descriptive-analytical method. The topic "civil liability" is posited wherever an individual is obliged to compensate another person's losses. An individual's responsibility for the compensation of losses stemmed from his or her actions has been proposed based on a natural rule hence it is in agreement with the devised regulations. Based on this responsibility, a particular debt relationship is formed between the loss causer and the loss sustainer. The main question is that what is the civil liability of the contractors in employment contracts as specified in the laws of Iran and France? The study results indicated that the contractors' liability and the relationships between the laborers and the contractors are still remaining in the area of the civil liability's general regulations in Iran unlike in France that the liability has been defined for each domain in a specialized manner. Specialization and elaboration of the exact domains of the contractors' civil liabilities is amongst the cases that should be carefully taken into account. Since the real recognition of the basis and nature of the employment and labor contracts' legal effects totally depend on the precise recognition of the concept and nature of such contracts, the need and necessity for gradual development of the preliminaries of the new rules and criteria's codification for the implementation of a coordinated and identical legal system for the employment and labor contracts is amongst the other findings of the present study.

Keywords: labor contract, contract works, laborer, contractor, Iran's laws

Introduction

The evolutions of the today's world are occurring swiftly and extensively in all the aspects and grounds. The legal issues, as well, are no exception to this happening and they have experienced vast changes and evolutions. In regard of the employment contracts, as well, changes and evolutions have been witnessed in such a way that the today's situation of contract works is reflective of the employment contracts' becoming more multinational and international. This is a process that has led to the presence and close competition between the multinational and international firms in international levels. The international employment contracts are currently enjoying vast, easy and increasing interventions more than before and they are being applied pervasively and multi-nationally. In this regard, every action that can become the subject of an employment contract is placed in the agenda of the contractors' negotiations to the extent that the technology instruction and transferring of culture and knowledge can also be included by employment or contractors' contracts. As the propeller of the national economy growth in the world's advanced countries, contract works is the chain linking the international and national economies (Emami, 2000).

It can be stated that discrepancies may arise in most of the employment contracts and they may essentially need amendment or appending of complementary articles during implementation and performing of the operations according to the contingent mistakes of the preliminary plan, error in preparing and arranging the bidding documents, unpredicted conditions and the need for being adapted to the new executive conditions (Shahidi, 2001). If an agreement is reached about the new tasks and their costs as well as the other conditions between the parties and the required addendum is signed and exchanged, no special problem may come about. However, if no agreement is reached on any of the factors influencing the contractual variations and in case of the persistent discrepancies, lawsuits can be filed by the bidders or contractors. Thus, there are predicted methods in the law for resolving the controversies each of which will be dealt with below. Furthermore, comparison of the labor and employment contracts seems to be necessary herein.

Therefore, considering the above-presented materials, the study assumption is that default theory and the loss stemming from harmful action are the foundations of the civil liability in the contractors' contracts respectively in the laws of Iran and France's laws, especially articles 1150 and 1151 of the latter. The present study seeks finding an answer to the question as to what is the basis of civil liability on the contractors' contracts in the laws of Iran and France?

Study Method

The present article is a descriptive-analytical study that has been carried out through library research. The subject realm of the study is the comparative investigation of the contractors' civil liabilities in the employment contracts as ruled in the laws of Iran and France.

Study's Theoretical Foundation

Work Contract

Work contract is a written or an oral agreement by which a laborer performs the assigned tasks during a temporary or non-temporary period for a contractor in exchange for a wage (A'ala'eifar, 2005). The goal of the legal rules and regulations is the setting of the social relations and since one of the most substantial social behaviors in the today's world includes contracts, they (contracts) possess a considerable stance in the achievement of this goal. Contracts are very important not only in law but also in many other fields. The ordinary individuals, as well, are to deal with contracts on a daily basis and this need for contracts has been interlaced with our daily life and resulted in the expansion of the discussions and science in this regard.

Liability

In jurisprudence, responsibility or liability is laid on the foundation of wastage. The most important goal of the regulations on the civil liability in various legal systems, including Iran's law system, is compensation of losses and restoring of an aggrieved party to the conditions before the loss was imposed. In regard of the civil liability, jurists have paid attention to the enforcement of real justice and observance of fairness more than the veneration of principles and logics. They have figured out that the human relations are so diverse that it is not possible for all their manifestations to be covered by a single principle. It can be proved through a comparative study of the current laws that Islamic jurisprudence is a dynamic one because what is theoretically discussed and proposed in the western laws for the foundation of responsibility has been accepted and implemented in the laws of Islam. These theories are not only existent in the rules of Islam but they are also realized as being necessary in their right place in Islam.

Employment Contracts

It is a contact by which the contractor becomes committed to fulfill the contract subject for an employer in exchange for a given sum of money. By employment contracts here, we mean the international business contracts that are signed in the form of contract works. One of the controversial cases in the international employment contracts is the discrepancies of the countries' regulations. The dispute-resolution law might be not identical in the contracting countries. Due to the same reason, efforts are made in the international level for making these regulations maximally uniform and identical. A convention was approved for the

first time in 1980 in Rome about the laws governing the contractual obligations. Based thereon, standard international contracts and papers were arranged that can be used by governments, companies and even real persons. It can be stated as a final conclusion that the best way for resolving the discrepancies of the employment contracts is that all the aspects and angles of the contracting plan should be assessed when arranging and signing contracts and ways should be predicted for the contingent discrepancies (Malekara'ei, 1999).

International Contracts

By international contracts, we firstly mean the transactions and agreements that are governed by and obey the civil laws' rules and regulations. Thus, such a trait as "internationality" should not prevent these contracts' inclusion by the civil laws' rules and regulations.

In the present study, the international contracts are those signed between two or several countries (Amir Gha'emmaghami, 1977). Such contracts can be endorsed between governments or between a government and a private party and/or exclusively between private parties and, of course, different regulations are governing the various aspects of the international contracts. In spite of their international nature, such contracts are not just related to the states' governance hence they are not following general international laws' criteria.

Civil Liability of Contractors in Employment Contracts in the Laws of Iran and France Right-Guarantee Theory

Based on this theory, the contractors are held responsible based on guarantee and they are considered as guarantors of the laborers. If responsibility is considered as the basis of guarantee, the contractor should ask the aggrieved party to seminally refer to the laborer. If the compensation is left uncompensated by the laborer, the contractor should him or herself compensate the loss. This is while the contractor has not been given such an authorization that s/he is responsible for compensating the losses as soon as the actualization of the liability conditions (laborer's default and imposition of loss). This theory has been accepted by the jurists more than the other theories because the laborers and employees are exposed to losses due to their performing of activities in the workshop and they cannot typically financially afford the compensation. Due to the same reason, contractor should guarantee the financial compensation of the damages caused by them and, in this case, the originality of the laborer's responsibility for his or her own mistakes is reserved. Contractor, as well, can refer to the guilty party after the compensation of the losses and the loss causers should finally tolerate the outcomes of their mistakes. Unlike based on such a foundation as default, contractor cannot get rid of the compensation of the third person's losses by the mere justification of his or her own guiltlessness and it is in this way that the aggrieved party's' rights are more favorably and more surely protected. According to such a foundation as guarantee, although the contractor is not responsible for the risky activities in the workshop hence the compensation of the contingent losses stemming from the laborers' mistakes, s/he is at least imposed with the risk of the laborers and employees' financial non-affordability and s/he can buy proper insurance policies and rationally save the workshop and the employees from the suffering of such risks.

Dispute Resolution in International Employment Contracts

A good contract is a system that determines and arranges the parties' relations in a meaningful, balanced and predictable manner. However, the occurrence of discrepancies in the contracts is inevitable. Furthermore, a contract cannot be arranged in such a way that all the violations and breaches and claims and discrepancies can be covered. The primary point is devising strategies and predicting the proper introductions for managing the discrepancies and claims in a contract (Malekara'ei, 2008).

Conditions of Contractor's Civil Liability Actualization and Referral to the Laborer

In order for a contractor's civil liability to be actualized and for the subsequent referral to the laborer for the paying of the compensation, there is a need for certain conditions the existence of which causes the actualization of the contractor's responsibility and s/he can refer to a laborer in a case-specific manner. The

present article discusses these conditions under the title of the general and the special conditions of the contractors' civil liability actualization. In order for the contractor's civil liability to be actualized, some general and special conditions should be actualized. The followings are the general conditions of the civil liability:

- 1) Imposition of a sort of loss
- 2) Performance of a harmful action
- 3) Existence of a causality relationship between the harmful action and the loss

Conditions of Compensable Loss: the uncommon and illegitimate losses have been only considered amongst the pillars of liability in the laws. These are losses negligently disregarded by the common laws or permissibly allowed by the written statutory provisions and no debt (guarantee) is created for the causer of them. Due to the same reason, it is read in the beginning of article (1) of the law on civil liability that "should a person cause the material or spiritual loss to another person without legal permit, s/he is responsible for the compensation of the losses originating from his or her actions". Thus, considering the intellectual and legal principles, the following attributes can be enumerated for the reparable damages:

- A) Sureness of the Loss:
- B) Direct imposition of loss
- C) Not previously compensated

Special Conditions of Contractors' Civil Liability Actualization

Using scrutiny in article 12 of the civil liability makes it clear that the general conditions should be seminally verified for the actualization of the contractors' civil liability as mentioned in the first chapter and there are secondly other conditions that should be existent for the actualization of the contractor's civil liability as a result of the laborers' performance of the given tasks.

It is expressed in the beginning of article 12 that "subcontractors included by the labor law are responsible for the compensation of losses". By inserting the constraint "included by the labor law" for the subcontractors, the legislator has excluded the set of the subcontractors who do not fall in the inclusion circle of the verdict of the article 12 in the law on civil liability. As an example, government acts in line with the enforcement of its governance upon appearing as a contract. Considering the definition of article 3 and the note 1 to article 13 of the labor law and paragraph 4 of article 2 in the social security law, a contractor is a legal or real person on whose behalf or demand a laborer works in exchange for a wage; the workshops' managers and heads, as well, represent the contractor who is him or herself responsible for all the commitments shouldered by the aforementioned representatives in respect to the laborer. The representatives are also guarantors of the responsibilities they are committed to beyond their contractual authorities and not accepted by the contractor before him or her. This is while the contractor's non-acceptance does not exempt him or her from his or her responsibilities before the laborer. It seems that the managers' agency is a sort of contractual and optional representativeness. In France's legal system, as well, contractor has vicarious responsibility in case that the loss causer (laborer) is found in an employment relationship with him or her.

In case that a harmful action has been conducted by the laborer:

- 1) The harmful action should have happened in the course of the task accomplishment.
- 2) It has to be seen where the employment relationship has been established?

In France's laws, there are two kinds of contract. One is a service contract signed between two persons and a contracted employer-employee or imperator-agent relationship is accordingly established. In this case, contractor is responsible for the laborer's perpetration of a quasi-crime. The second is a contract concluded for the performance of a special task meaning that there is no laborer-contractor relationship holding therein rather the relationship is more of a contracted work nature. Here, the contractor is not responsible for the subcontractor's perpetrated quasi-crime. But, how is laborer or servant distinguished from the contractor?

In the contracts between the contractors and laborers, it is the former that determines the method of the job performance while the subcontractor is under the supervision and control of the contractor in the contracted works. So, the contractor is not responsible for the harmful actions of the subcontractor in the

second form of the contracts for there is no employment relationship between the contractor and subcontractor in the same way that if a contractor purchases a badly manufactured device from the market, s/he is not held responsible before his or her employees because neither the manufacturer nor the seller has been assigned by him or her (contractor). So, as it was mentioned before, the constraint inserted in the beginning of article 12 of the civil liability law, a governmental contractor and the contractors who are not considered as laborers are excluded from the verdict stipulated in the foresaid article. In other words, this set of the contractors or subcontractors are to be excluded from the subject of article 12's verdict. Certain criteria have been put forth regarding the employment relationship and civil liability of the contractors with and before their agents and servants' actions.

Necessity of Loss Imposition During Job Performance or In Relation Thereto

One of the other specific conditions needed to be actualized so that the contractor can be held liable for the actions of his or her workers is that the damage should have been imposed during the performance of a task by the laborer or in relation to the job performance. Article 12 of the civil liability law realizes the verification of the causality relationship between the action and the loss imposed during the task accomplishment or in relation thereto as being sufficient for holding the contractor liable. Verification of the causality relationship can be inferred from articles 325-328 and 666 of the civil law and articles 11 and 1 of the civil liability law.

Contractors' Exoneration Cases

It has been stated in article 12 of the civil liability law that "unless it is verified that the contractor has taken all the precautionary measures required by the task's states and statuses and also even if the contractor had taken all the preventive measures and exercised due care, s/he could have not prevented the loss imposition". The cases that the contractor is exempted from the compensation of the losses imposed by the laborer and his or her employees can be determined using the abovementioned article.

Normal Care in Worker Selection

In fact, the basis of the contractor's responsibility is guaranteeing the aggrieved party's rights but, considering the last section of article 12 in civil liability law, in case that the contractor can prove that s/he has exercised due care in his or her doing of the assigned task, s/he is exempted from liability. In case that the aggrieved party cannot demand the compensation of the imposed loss from the contractor because of its being stemmed from a third party's action and also being against the general rules of liability, the legal texts are sufficiently referred to. However, if the contractor is found not having exercised the normal care, s/he has perpetrated personal default. In France's legal system, as well, there are numerous cases in this regard, including about robbery and fraud by the servant (laborer) for which there are many files in France's judicial procedure and it seems in the first glance in all of them that the servant has stepped beyond the course of his job-related actions but the French courts realize contractors in such cases responsible for loss compensation not for it has been stemmed from a third person's action but due to the responsibility originating from his or her own action, i.e. default in exact selection of the workers (Dicken, pp.505-520). Similar to France's judicial procedure for such an assumption as the contractor's personal default, the premises of article 1390 of the social security law can be also used from Iran's legal system.

Common Care in Preparing the Instruments and Offering Instructions to the Workers and Proper Training of Them

It has been stipulated in the note 2 to article 95 of the labor law that "if a contractor or a manger of the unit subjects of article 85 of this law is found having provided the laborers with the required technical and sanitary work protections as well as the needed instruments and tools and the laborer refrains from using them even after being sufficiently instructed and priorly notified or s/he uses them without paying attention to the existent instructions and regulations, the contractor would not have any responsibility". Considering article 12 of the civil liability law where it stipulates that "the subcontractors that are included by labor law should be held liable for loss compensation unless it is verified that they have considered all the precautions

required by the job's statuses and states", it can be inferred despite the original liability of the contractors for the compensation of the losses stemming from his or her workers and employees' actions as stipulated in article 12 of the civil liability law that the contractors are not held liable in case that they prove that they have exercised all the due care and reference can be made to the laborer having caused the loss based on the materials presented underneath article 12 of the civil liability law.

Common Care in Guiding the Operation Accomplishment

The contractor's responsibility for the actions of their laborers and employees is not limited to the exercising of care in precise and qualified selection of them and it is not also restricted to his or her instructing and training of them and providing them with the suitable instruments and tools rather, besides the abovementioned cases, the contractor is responsible for adequately supervising the accomplishment of operations, good performance and the fulfillment of the assigned tasks by the laborers and employees. In large workshops or formations of the contractor, the control and supervisory system is usually responsible for exact controlling and guiding of the laborers' actions. The control system is particularly installed by the contractors for the observance of the safety principles in the workshops and in the sanitary and security units as well as for the workplace protection. Now, if the contractor is found having properly fulfilled his duties in regard of guiding the operations' accomplishment and carefully taken the recommended procedures, s/he is exempted from the liability stemming from the laborers' faults as ruled in article 12 of civil liability law under which the following statements have been presented as one of the other cases of the contractor's exoneration from liability: "... or if they had exercised due care, they could have not prevented the loss imposition ...". So, one of the other cases of the contractors' exemption is that the accident should have occurred in such a way that any other legal or real person could not prevent the imposition of loss under the intended accident's conditions because the accident in that case has happened either as a result of a force majeure (unpredictable incidents) or by a third person's actions that cannot be attributed to the actions of the contractor or a laborer or an employee thereof. That is because force majeure and the third person's actions can be posited for the other civil liabilities, including the personal civil liability and the government's civil liability, and they do not need any specialized discussion in this regard so we avoid entering the discussion about them and the pillars and elements and conditions of each of them and the readers are recommended to refer to the credible resources for discussions on the civil liability of the foresaid two types (Hosseini, 2011, p.45).

Dos and Don'ts of Contractors' Civil Liability

Contractors are responsible for the compensation of losses imposed on the third persons. The labor law contains some protective regulations and it is generally a support for the laborers that appear as the weak party before the contractor. The civil liability law, as well, possesses regulations in the same regard and for the completion of the labor law's regulations but, of course, not for the support of the laborer but for the protection of the third persons that may sustain losses or damages as a result of the laborers' activities.

In this case, if a laborer performs an activity following which a loss is imposed on a third person such as the pedestrians or the individuals present in the work scene, it has to be stated that the loss suffered by the third person will be most likely uncompensated if the aggrieved party refers to the laborer for his or her low financial affordability. Due to the same reason, legislator has enacted regulations that hold contractor liable for the compensation of the losses caused by his or her laborer and employee to a third person.

Conclusion

Considering the study hypotheses, it was found out that the construction employment contract is more common for the building operations meaning that the contractors are mostly associated with construction and building works and the construction employment contracts are generally pertinent to the building and construction operations whether in the area of private law or in the area of the general law. Construction employment contracts or contracted works' agreements are enumerated amongst the most complete kinds of the governmental contracts.

The results also indicated that the contractors are held liable for the compensation of losses they have caused guiltily or faultily with its precondition being the recognition of the fault as the cause of the loss. Put differently, according to this theory, the only reason that can justify a person's responsibility for the compensation of the losses is the existence of a causality relationship between the fault and the imposed loss meaning that the aggrieved party can demand the compensation of losses in case of proving that the contractor's fault has caused the imposition of loss. Based on this theory, the aggrieved party plays the primary role as a claimant in the hearings and s/he has to shoulder the justifications. Although the loss causer cannot be demanded to compensate the losses in the fault-based systems as long as his or her fault and guilt are not justified, the legislator has originally considered the fault as the cause of loss imposition in some of the cases for easing the compensation of the aggrieved party's losses. In such an assumption, the contractor's fault can be imagined in two states in respect to the losses imposed by his or her servants and this has made some be inclined towards the theory of contractor's fault as stemming from his bad choice of the laborers and some others have become more inclined towards the theory of the contractors' fault as originated from the bad care and weak supervision in regard of the laborers' actions.

Non-codification of uniform criteria that can be applicable for all the governmental organizations and all kinds of contracted works led to the governmental individuals and organizations' exercising of their own personal tastes and conditions in each of the contracts they concluded with the third persons; this was followed eventually by the distress and vast numerosity of different kinds of employment contracts. Resultantly, due to the need for and necessity of gradual stipulation of the legal provisions, criteria and new regulations should be enacted for enforcing a coordinated and uniform legal system for the governmental contracts.

Remarkable industrial and technological expansion and the growth in the social life, especially urbanization, during the recent years (particularly in the years before and during early revolution) that had been made following the government's implementation of social programs resulted in the rapid increase in the number of various kinds of construction employment contracts and this necessitated the codification of criteria and regulations for determining the general framework of such contract types. Amongst the current concerns of the contracted work society is the elimination of the hindrances and reflection of the existing problems in the relevant regulations and instructions and circulars. Factors like inflation, fast fluctuations in the currency exchange rate and possibility of price increase or the abrupt shortage of the raw materials and goods cause the creation of impediments to the negotiations and conclusion of long-term service or production contracts. In other words, the contracts that meet the parties' goals and expectations in the beginning may later on cause reduction and/or even destruction of a party's expected profit due to the changes in the economic conditions hence they may be followed by nothing other than liability for them.

Suggestions

- 1) The amount of the parties' will governance should be determined in the contracted works' agreements and construction employment contracts.
- 2) The contractors and constructors should be supported in respect to the government's power and influence.
- 3) The judicature should play an accentuated role in this regard as the main pillar of a government and it has to have the required infrastructures in regard of the contracts and their relevant cases.

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