



Available Online through

www.ijptonline.com

A COMPARATIVE STUDY OF THE EFFECTS OF TERMINATION OF THE SALE IN IRAN LAW, JURISPRUDENCE, AND 1980 VIENNA CONVENTION

Fariborz Lakzaee, Seyyed Hossein Sadeghi

Master of Laws, Department of law, Islamic azad university, Zahedan Branch.

Phd, Faculty Member at the University of Zabol.

Received on 29-12-2015

Accepted on 25-01-2016

Abstract

The current paper's title is a Comparative Study of the Effects of Termination of the Sale in Iran Law, Jurisprudence, and 1980 Vienna Convention. Although both parties in the normal course of their civil and trading contracts expect their agreements run perfectly, non of the parties can terminate them unilaterally. However, something happens due to the faulty product or a big difference with the actual price, etc. Insisting on continuing necessity of the process termination seems to be vain, so in some cases it is allowed for one of the parties to be able to disrupt binding of the agreement in favour of himself. Discussion about legal relationship between the parties after announcing the termination of the contract about past and future and nominating their mutual responsibilities and the way of compensating the damages is one of the main points of this study. In this regard, and in order to enrich the debate and provide scientific facilities for the accession of Islamic Republic of Iran to the 1980 Vienna Convention of International Sale, it has been tried to adapt the Convention laws and the views of commentators and bring acceptable results. The main question of this thesis is that how are the effects of the termination of the Sale in Iran's Law, Jurisprudence, and 1980 Vienna Conventions? The main hypothesis in the response to the above question is that in Iran's Law, Jurisprudence, and 1980 Vienna Convention on the assessment and recognition of legal relationship of the parties after announcing the termination of the contract and the rights of their responsibilities at that time, there are still some uncertainties to be felt. The research method is descriptive-analysis and the results show that the termination of the contract has some effects on the rules which are established to solve parties' pretensions or any other contract's laws which have nothing to do with laws controlling the rights and responsibilities of the parties after the termination of the contract and in civil law in Iran adherence to jurisprudence while sale is certainly accepted. However, a relatively large portion of civil law is referred to damages and issues about it.

Key Words: Sale, Sale termination, The rights of the Iranian, Shiite, 1980 Vienna Convention.

Introduction

One of the main legal principles which have been relatively accepted in most of the legal systems with minor differences is the "principles of the necessity of contracts". Also, in 1980 Vienna Convention on the termination of the sales by both the seller and the buyer has been respectively checked in articles 64 and 49. Discussion about circumstances under which the seller or the buyer are allowed to terminate the sale has been done in internal works such as juridical or legal sources and exoteric books in details. But for analyzing and recognizing legal relationships between parties after announcing the termination of the contract and their rights and responsibilities at that time there are still some uncertainties and every nominee tends to know the results of the contracts after it's termination before announcing it. Given the importance of the case and it's scientific effects with respect to each parties responsibilities and probable cases of disagreement has to provide an appropriate response. Since these effects are not mentioned independently anywhere and ineluctably we will use other legal material which is mentioned sporadically in different parts. Also the international Sale Convention has mentioned "works contract of sale" within the articles 81-84 which their adaptation with Iran Civil Laws enriches the study and clarifies dimensions and fills the legal gaps. Although people have their own expectations in normal process of civil and commercial work to have their contracts run perfectly and non of the parties can terminate it on their own. They are some cases which due to problems like faulty products or big differences between product's price and the actual price, its useless to insist on keeping the contract run so it is allowed in some cases that oneb of the parties terminates the contract on his own. Discussion about legal relationship of the parties about past and future after announcing the termination and deciding the responsibilities and the manner of income damages is one of the main points of this study. With this regard and for enriching the concept and providing scientific evidences adhered to Islamis Republic of Iran to 1980 Vienna Convention, it has been tried to adapt convention's rules and commentator's view to internal rules and bring out acceptable results.

Regardless of difference in opinion among lawyers, the meaning and the concept of this principle can be defined as when one of the parties makes a contract with respect to acceptable substantive and form conditions, are basically attendant form taken to responsibilities which they have taken due to the contract. In the case of each parties violation, the other party can use different strategies provided in the countries legal system as "running the same commitment" or demanding reparation for any damage due to the breach of the contract. There is a huge economic and social principle supporting this fact. Still insisting on continuity of the necessity and patterns of performing seem

to be useless due to various reasons. This is where the party is allowed to terminate the contract to his own benefit and escape from the obligations rising from the contract. In Iran civil Law following jurisprudence , while " the principles of the necessity of the contract" has been clearly accepted, still a large portion of civil law is the provision of sale and it's rules. Some cases of the termination of the contract on the part of one of the parties has been mentioned in the 1980 Vienna Convention on the International sale which are mentioned in articles 64 and 49 respectively. Discussion about the conditions under which one of the parties has the right to terminate the contract has been widely done in internal works such as legal or juridical sources and also in external works. But there are still so many questions concerning the legal relationship of the parties after termination of the contract and each nominee tends to know what is going to happen to the contract after it's termination beforehand. The author in this article tries to provide an appropriate answer to this problem concerning the importance of the case and both parties' responsibilities and probable disagreements. Since these works have not been mentioned separately and independently in civil law, inevitably we use other sporadic legal provisions in different chapters and their legal laws and principles. Also International Sale Convention has mentioned "works of the contract of sale" in articles 81-84 whose adaptation with Iran legal laws has enriched the subject and clarified it's dimensions and helped filling the gaps.

Given the importance of the case and it's scientific works in terms of mutual responsibilities and probable disputes. A good response should be provided. Few studies have been done in this field that some of them are mentioned:

Kazemi and Rabiee (1391) have studied the probable termination of the contract in Iran law with regard to the Convention on International Sales (1980). It is mentioned in this study that resort to the sanction happens when the time of commitment arrives and the committed does not perform his responsibilities and the actual breach of the commitment happens. But it may be times before the due of fulfilling the obligation that one of the parties realizes that he is not able to perform his responsibilities on time. In this case the probable breach of the contract comes into consideration and the question is that whether the obligee can breach sanctions (suspensions or termination of the contract) or should wait for the arrival of the date of the contract. Although this concept in Common Law (America and England) has developed perfectly and accepted in international law especially International Sale Convention and some of the foreign countries having a system of written law (Germany, Italy,..), in Iran rights, the theory of probable termination is not taken into consideration and there is no special provision of it's own. It has been tried to clarify the position of Iran with a comparative study.

Mohammadi (1390) has presented an analysis of the Convention on the International Sale of goods (1980 Vienna) and Iran right. It is mentioned here that the significant improvement in trading in the last century, regulating new laws or at least reconsidering and revisioning so many rules and regulations to meet the needs and business claims is so necessary.

Research Goals:

- 1: explaining the effects of sale termination in Iran's right, jurisprudence, and 1980 Vienna Convention
- 2: explaining the partial termination or contract's analysis in the convention of international sales of goods

Research Method

This study considers the subjects in theoretical levels based on cross-sectional method and data and information are selected through the study of books, articles, and thesis about the relevant article. Clearly, in order to do any scientific research, it is important to choose an appropriate method relevant to the subject and theoretical framework of the subject. Hence, as it was mentioned, this article is descriptive-analytic to test the hypothesis, inference, and deduct. Methodological pluralism is used.

Definitions:

Sale literally means trading and business in legal terms (Ansari and taheri, 1384, p. 571)

It means the best, highest, or own literally and in legal terms it means each or both parties right to terminate the contract. (JafariLangaroudi 1378, p. 919)

Trading is a kind of sailing in which certain termination right conditions in specific time is decided for both parties or the third one.

Using the trading depends on the will of its owner and its application is not limited to the violation of the obligations. (Katoozian 1387, p.313)

This sale includes conditional sales because any condition of the trading does not bring conditional sale, while conditional sale is a kind of trading since trading becomes a sale in conditional sale. (JafariLangaroudi 1378, p.968)

Ownership of the seller in trading goods:

In sailing contracts buyer's right on the seller does not have a stable position before the end of the contract's time. Because a person who has the right to terminate a contract, can terminate it whenever he wants and changes his ownership to the previous owner. It should be noted that owner's ownership in this trade is transacted since the start of the contract not it's end. (Article 364 of Civil Law)

The need to set time for the trader:

Necessity of determining time for the trader in the contract means in the case of not determining time, the condition becomes useless and its uselessness brings unknown causes of ignorance in the trade value because the presence of conditional sale and its time in trading have effects on trading value. Indefiniteness of the trading time when the contract termination right is for the seller declines the sale value for the buyer indefiniteness. If termination right is for the buyer with unknown duration, the value would incline indefinitely. So there is unknown value in both cases. Ignorance of sale in accordance with article 233 will cause the nullity of the trade while certainty of the duration clarifies the trading value.

Priority of termination to trade signing: In the case that the possibility to cancel the trade is allowed for both parties, if one of them terminates the trade without the other one using his right, the contract is cancelled. In the other words, trade's termination is prior to its signing and confirmation. (Article 452)

Termination of the contract and the related works:

Contracts require law. It means that when a contract is established legally, it has to be binded between the parties and their legal successors, unless another legal cause leads to its dissolution. Article 212 of Iran's law expresses this principle in Islamic Law "Esalat Al Lozoom" and notes: "contracts which are set legally between dealers and their surrogates have to be binded, unless it becomes terminated due to parties' will or any legal reason".

Sale Contract and its Conditions:

Sale defining into trade is related to customary terms and concludes in the idea that purchase is the same in turn and its opposition in renting belongs to sale and profit. Instead they are connected and like other customary terms there are vaguenesses and differences. In ambiguity, one should refer to common law and the agreement with customary necessities should be respected even though customary rules and applications have been used. The opposition of law with custom constrains and conditions may include violation in contract's principles and it may be a tenure in principles with respect to trading principles and its shortage in law's view which may be an opposition to the mind and custom which have nothing to do with principles and there is no difference among personal and all that has been proven in debt or fixed to the sale of the debt. Generally, whatever that describes the situation.

Conditions of the sale accuracy:

1: Maturity: it is valid that in the influence of possessions in selling and buying and their "maturity"; so he is not independent from his parents and cannot sell or buy anything independently. Except the time he has the permission of

his parents. So in the case that the person is not able to do the contract, his possessions are not influential and if so, he needs parent's permission to do any transaction. Since parents should just be a voucher, it is not something impossible. And if not, it becomes total accuracy with permission and according to the evidences, there is no need to show his merriment mode.

2: Wisdom: but for someone who is insane and passing such a period of madness, so like an asleep, incoherent, slack, ignorant, drunk in the sense that the person is not able to think and decide, so like someone who likes to be fool is sentence be taken and he cannot make a trade even with his parent's permission.

3: Liberty: when someone is forced to make a sale reluctantly by the violation or treatment, the sale is not valid and applicable unless he accepts the situation by the passing of the time and decreasing reluctance in this case everything is clear and nothing is hidden- when some are aware of this. If the case of disagreement is doing something by force in terms of quality or quantity it returns to it's own intelligence and rejection is likely reluctant if the reference is reluctant to accept the principle and conflict and a non-acceptable conflict is a case which is more serious than reluctancy after it is understood. Its current in the non-reluctant expectation for reluctant's satisfaction or redecision for what is mentioned in the main or meaningless expectation and it's not possible to cancel the trade before owner's permission or his not permission. If the owner was reluctant, according to the contract, the other one should follow the rules without any need to have the persuer's concurrence. The reluctancy of non-owner one for doing the contract is of uselessness and follows it's principles. When the reluctancy is right they should refer to legal authority and there is no need for owner's stewardship, it rather is not useful for catching the aim in the case of truthfullness of the steward in not doing the contract.

Iran's law:

The effect of impossibility of trading in exercising termination right is one of the cases which has been attended and studied in jurisprudence and decided iran's sale law such as legal text with legal opinions and documents even if imperfect. Since we cannot deny juridical background effects of the issue on legal or juridical literature in this area, first we refer to shiite jurisprudence and analyze the agreements or disagreements of great jurists and then consider it's position in Iran's sale law.

Jurisprudence:

In the area of jurisprudence most of the questions are about what effects do the quality of the material possession or customer's right in sale, waste, construction, usage, transfer, lease, pawn so which makes the material transfer

impossible or its repetition with the same characteristics and attributes of the bill have on exercising termination right? Contemporary jurists usually believe that legal and material possession do not constrain possession right of the customer because terminations about the material not the contract to be able to say that there is no material so termination right exercise is possible. Given that in a sale the problem with some possessions prevents exercising the termination right is against the rules and it is obvious.

In addition we have some narratives about some sales such as parliment sale which talks about sale survival after termination, while the annulment is not bound to the survival and it has no difference with termination except in the fact that annulment is by both parties and termination is only by one party. Therefore the principle requires sale's stabilization. Ayat Allah Mohammad Kazem Tabatabaiee believes that making changes and construction and literally "sale" requiring need any change in recourses do not constrain customer's termination right, even though there are opinions about how to compensate customer's right. He says evidences show that the customer can keep the construction in the sale position and pay the price. Also, Sheikh Ansari refers to "sale" survival as something serious and the main reason of the sale is waste removal that with this regard there is no difference between its survival and removal.

Although sale's perspectives refer to customer's dominate supposition and there is no encroach in termination stability at the time of removal, some suspicions come up about the first idea.

1980 Vienna Convention on the International Sale:

At the present time due to the increasing development of international trading and in adequacy of given solutions by internal laws of countries, the international community is increasingly willing to exercise uniform and international regulations which are suitable for the expectation of those who deal with these matters and responsive to their multiple needs in terms of speed, race, and strength.

Unlike domestic transactions in which both parties are often aware of the credit and business conditions and both are equally supported legally. They do not have enough information about each other's legal status and on the other hand factors such as the necessity of the transportation of the traded products and insurance coverage's for that and responsibility classification for each one from whichever country who are adapted to its regulations and customs and are not aware of the laws in the trading country.

It seems to be needed to prepare appropriate mechanisms in order to build trust and confidence in each party regarding the correct and on time implementation of the regulations.

Ineffectiveness of the Contract's Termination in Terms of Some of the Provisions of the Sale Contract:

Legally, contract is the result of both parties' volition and the match point of their will and in the definition and description of its substances and legal framework should consider both parties' common intentions and legal and juridical principles like "intention-based principles" and concludes that usually contracts and agreements regardless of their physical form and to the extent that it is not against mandatory legislative judgment is influential and valid. Fulfillment of every contract requires mutual agreement of many so-called Rakan of contract or the contract itself. For instance, according to article 339 of the Civil Law: after the seller and the buyer contract in the sale and its price, the sale is acceptable.

Compensation of Termination losses: Given the right of termination to a person who is badly effected might be insufficient for the compensation. For example, although the buyer is up for the defective goods after finding out the defect, this is not the end since the seller might lose some several good customers or the price has increased or he may suffered because of the delay in the good's delivery.

Such damages which are possible and have to be compensated are unfortunately not reparable in civil and other laws and juridical proceedings do not tend to compensate these damages for unacceptable reasons such as in directivity of the damage or in relativity of the damage to the complainant or so. However, it has been specified due to the compensation and the manner of their performance Exported in paragraph 1 article 81. Contract termination releases both parties from duties and payments.

The 1980 Vienna Convention Bilateral Extradition:

According to Convention, in order for the buyer to be able to terminate the contract or even claim the money he has to return and the product as it was at the time of the sale. In this case, he might lose the right to shrink the contract. Still there are some cases in which there is the possibility of termination even though retraction is not possible.

There are mentioned in article 82 of the convention as it follows:

If it is not possible for the buyer to retract the product as it was bought, he may lose the right to terminate the contract or the seller's commitment to return the money. The given paragraph is not applicable in the following situations:

- 1: in the case that the possibility to retract the product as it was at the time of his own will or leave
- 2: in the case that a part or all of the product is ruined as the result of control and search of article 38
- 3: in the case that a part or all of the product has been sold or changed or ruined in a usual trading procedure before buyer has found out about the incoherence.

So it is considered that in the view of Convention, there is a close relationship between the actual product retraction and sale termination right. Buyer who is incapable of or unwilling to retract the product, even if he proves the incoherence of the product with agreed traits is not allowed to terminate the contract. Mentioned exceptions in threefold article 82 of Convention is international due to the actual trading necessities and it is justifiable because it is unfair to ignore buyer's termination rights when an unavoidable external factor causes retraction impossibility or there may be some defects in the product that are unrecognizable without a technical or laboratorial study. A part of the product may be spoiled or ruined and this does not have to abuse buyer's right. Therefore, the standard point in paragraph C article 82 is for truth worthy customer's right that a part of the product is sold or used or changed before realizing it's problem and it is realized after the study, so buyer's right is safe.

Damage Compensation:

The possibility of termination right and damage compensation in cases where one of the parties on the basis of one of the legal sales and for preventing sale's loss does the contract, he is doing the simplest thing to keep his wills safe and break the adverse situation resulting from the contract. But this is not always that simple and contract termination is not enough for preventing damages since he might lose contract opportunities with others and might be forced to buy the product so much expensive than before because of the price inflation. Suppose a person wants to buy a car, receive it, and pay the price.

He refers to an agency and buys the car. After delivering the car, the buyer goes on a trip with it and suddenly due to a hidden defect something dangerous happens. So the car is broken and it's occupants are dead. Assuming that the buyer can prove the defect and terminates the contract and receives a same car or gets back the money. Morally, the seller's responsibility is not finished. He should pay the damages and compensate the loss. In the case of compensating the damages to the customer resulting from the car defect, with respect to civil responsibility and 3 social conditions (check-loss session + Cebit relation+ taking damage) is necessary.

But there is no clear law for after contract termination damages which are under taken by the buyer in Iran except for normal contract costs. In this case we refer to the provisions of the Convention. According to paragraph 1 article 82 and paragraph 2 article 45 of Convention, using the right to resort to other compensation method (like contract termination or asking for substitute conduct) does not deprive the customer from any kind of right which might have for requiring a compensation and contract termination depending on paying any payable damages and deludes both parties from doing their responsibilities. For instance, a buyer who is forced to terminate a contract few days before his

break due to its incoherency with the main product may be able to ask for the price paid for the rented car and receives it. In some legal systems, the one who has terminated the contract is not allowed to ask for repayment. This case is rejected in the Convention and the person who has terminated the contract due to given reasons is allowed to ask for repayment.

In Iran Laws in article 386 of Civil law, the right to ask for repayment added to contract termination is given to the victim limitedly. We see in this article: if about two previous articles, the contract is terminated, the product price and the termination charges are on the seller. It does not assume that the given law is especially about articles 384 and 385 of Civil Laws. This law can also be used in similar cases in which one of the parties terminates the contract due to one of the legal reasons. Of course it is clear that there is a special condition on the buyer's part, since in his side it is the condition that both parties have the right to terminate the contract. Therefore, the repayment can be claimed after the termination. But about a buyer who suffers from a hidden defect as the result of using his ignorance, he is allowed to demand for repayment and terminate the contract after its cancellation. Anyhow, it is legally inappropriate to deprive the buyer from any termination law and just be satisfied with any termination which has no legal or juridical base. On the other hand, it is mentioned in the article 391. In the case of belonging a part or all of a product to someone else the seller should return the price, and in the case of buyer's ignorance of the defect, the seller should also pay the reparation. This law is perceivable in the guarantee and it's just used when the owner is somebody else and he does not accept and prove the contract and consequently the contract is terminated. It may seem inappropriate to use this article to terminate a contract, but the reason is that one of the parties has not done his own responsibility. It means that as it is explicitly or implicitly conditioned in any contract that the product should be working and the price is appropriate and the seller is not cheating and following the articles. This figurative condition is also deducted that the seller sells his product to a customer.

Selling without legal is illegal and the seller has to pay the repayment, especially the one which is illegal in Convention and causes contract termination law. As the conclusion, if one of the parties acts against explicit or implicit laws and makes the other one to terminate the contract, the forced one is allowed to call for reparation as a result of the other's illegal practice

1: In the Code of Criminal procedure of Iran and Britain, the accused person in different stages of sentencing has specific rights of doing process including constitutional neutrality and accelerated processing of announcing everybody an innocent and prohibiting restrictive matures and depriving freedom and so on.

2: Protection of the defensive right of the criminal and criminal proceedings, infect, guarantee the natural right and freedom and people especially the right to live and be free. This right is based on people's characteristics regardless of cultural, racial, and belief differences.

The new law of criminal proceeding has special privileges due to the former rules and the rights of the accused person are kept safe:

1: Protection of accused defensive rights in criminal proceedings and infact guarantee the mutual rights of people especialtt, their freedom and living rights.

2: due to the special status of the investigation of the accused in the preliminary process of investigation based of on the principles, a fair trial before the interrogation in support of the defendants in the criminal justice systems is predicted. Investigation or justice officers are obliged to comply with the guarantees on the behalf of investigation officer or it's accomplice.

Suggestions:

Our expectation from a legislature is that like most of the advanced legal systems all over the world, develops some laws to allow enforcers and agents involved in juridical systems including judges of criminal courts give the rights of the accused person and ensure him that his right will be respected and it's violation has enough administrative sanction. Juridical officers are expected to provide plan offset of the " charter of the accued rights" in the police station corridors visible to visitors and defendants so that they comply with this right, perhaps it is useful in juridical reform processes and the matter of criminal proceedings and to fill legal gaps. Violation of other's rights including accused people is an unforgiveable sin and it is expected from juridical officers to spare no effort to hold it on strict observance sources.

References:

- 1: Akhoondi, Mahmood, Criminal Courts Principles, fourth edition, second copy , Tehran, Sazman Publication, 1388.
- 2: Akhoondi, Mahmood, Criminal Courts Principles, fifth edition, second copy, (Mizaan Publication, Tehran, 1382)
- 3: Ardebili, MohammadAli, Charge Realization or the Right to Know about the Subject and Charge Reasons, Journal of Juridical Studies, Number 43, 1385.
- 4: Ashoori, Mohammad, Criminal Court Principles, Tehran, Samt, 1383, eighth copy, first edition, p. 11.
- 5: Omidi, Jalil, (1379), Accued Person's Right in the Courtaccording to International and Local Documents about Civil Law, lawyer's Institute Journal, Number 171, p: 43-70.

- 6: Amir Arjmand, Ardeshir, the International Juridical Civil Laws, Tehran, University of ShahidBeheshti Publication, 1386, Second Copy, First Edition, p: 171- .
- 7: Ansari, ValiAllah, Criminal Studies Rights (Harmonical Study), First Copy, Samt Publication, Tehran, 1380.
- 8: PrviziFard (1391), Arresting the Accued person Without legal order, Harmonical Study in Iran and Britain Law, Law Journal (scientific- analytic), Number 26, p: 75-92.
- 9: Tadayon, Abbas, Reason Aknowledgement in Criminal Court Principles, First Copy, Tehran, Mizan Publication,1388.
- 10: Writers, Reasons to Justify Court Disputes, First Copy, Razavi University Islamic Sciences, Mashhad, 1382.
- 11: J, R, Spencer, Criminal Court Principles in Britain, Translation with MohammadReza GoodarziBirjandi and Leila Meghdadi, First Copy, (Jangal Publication, Tehran, 1382).
- 12: Khaleghi, Ali, Criminal Court Principles, Third Copy, Tehran, Juridical Research ShahreDaanesh Institute, 1388.
- 13: Zera'at, Abbas, HajiZadeh, Ahmad Reza, Reasons for Dispute Provement, First Copy, (GhanoonMadar Publication, Kashan, 1388).