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Excuses For Exemption From Compensation Due To Violation Of Obligations In Iranian And French Law (With Emphasis On Sanctions)

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Abstract

The principle of necessity in contracts is one of the most fundamental principles accepted in both the Iranian and French legal systems. But this principle, like other legal principles, is not absolute and has exceptions. The present study, with a descriptive-analytical method, tries to answer the question that what are the conditions and basics of exemption from damages in the legal system of Iran and France and what are its voluntary and involuntary excuses. What is the role of embargo as one of the examples of involuntary excuses in the exemption from compensation. The findings of the research indicate that these exceptions are known in French law under the general theory of contractual excuses and in Iranian law as the rule of excuse and obligation to fulfill the contract. The general theory of contractual excuses in French law includes "impossibility of fulfilling obligations", "failure to perform the contract" and "unforeseen events". In Iranian law, the excuses for the execution of the contract are known under the two rules of "excuse of fidelity to the contract" and the rule of "negation of hardship and hardship". Thus, in French law, force majeure and its justification, i.e. embargo, are involuntary excuses. The cases mentioned in Iran's laws are also accepted and are among the cases of compensation for damages, but failure to perform the contract and unforeseen events have not been specified, and terms such as making it difficult to perform the contract cannot be counted as reasons for exemption, and this Factors should be accepted as risks in contracts.

Keywords: *Exemption conditions, breach of obligations, compensation, sanctions*

Introduction

After the parties agree on the creation of obligations, rights and duties are assigned to them. The primary purpose of forming any obligation is to commit the parties to the implementation of these obligations. This matter has been accepted as one of the basic principles in all legal systems. Obligations are an important part of people's social behavior, and all people are bound to meet others to meet their needs, and what is important in valuing people from the public's point of view is the degree of adherence of the parties to the commitment to its implementation. is However, the obligee refuses to perform the contract and this refusal may cause damages to the other obligee. Therefore, the breacher of the contract will have a contractual responsibility towards the obligor in case of failure to fulfill the obligation. Therefore, in line with the implementation of justice and the necessity of compensation for damages, which is considered as a rational and logical rule, in Iranian law, Article 221 of the Civil Code deals with damages caused by failure to fulfill contractual obligations and talks

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about its conditions. In this regard, the high position of the principle of full compensation of damages is considered self-evident and indisputable (Qasemzadeh, 1401: 19). However, it is not possible to speak absolutely about the claimability of damages; Because first of all, in all legal systems, there must be conditions for the possibility of claiming damages, and after meeting these conditions, a ruling can be made on full compensation for damages. Secondly, like other legal rules, the principle of full compensation is not absolute and has exceptions, which, if they are fulfilled, will reduce the liability or the complete exemption of the obligee from the compensation of the loss, according to the case, which are called the exceptions of contractual liability to be one of the topics that has received less attention in domestic laws and regulations and even in scientific researches is the analysis and summarization of factors that reduce contractual liability. The importance of this issue comes from the fact that although the need to compensate the loss is necessary according to the law of custom and common sense. But sometimes, even with the general conditions of the possibility of claiming damages, due to the occurrence of some factors, the breacher of the contract will be exempted from paying damages and the obligor will lose the possibility of receiving damages. One of the most important reasons for exemption is; Force majeure, limitation of liability, lapse of time and non-conventional damages, termination of contract execution, unforeseen events. The emergence of these factors is either by the law, i.e. the law creates this right for the obligee, such as the Cairo authority, which is provided in articles 227 and 229 of the Civil Code, or by the contract, such as the condition of non-liability or the condition Limitation of the duration of filing a lawsuit, the influence of which is acceptable according to Article 10 of the Civil Law. In French law, "force majeure", "unforeseen events" and termination of contract execution are important exceptions to the principle of the necessity of contracts, which are also mentioned in articles 1218, 1195 and 1186 of the French law. Also, the principle of freedom of contract, which is mentioned as the main essence of the sovereignty of the will, is one of the oldest freedoms in the French legal system, and even some French writers refer to it as the first principle of contract law (Pakbaz, 1400). : 132). This provision is also referred to in Article 1102 of the French Civil Code. These cases, which are among the main reasons for exemption, have a significant impact on the fate of the contract, which, depending on the case, causes the termination of the contract. Exemption from compensation, modification of the contract or causes the right of termination. This article examines the guarantee of the breach of obligation in the legal system of Iran and France, the basics of contractual excuses in the laws of the two countries, contractual excuses and their types, and finally, we examine sanctions as one of the examples of the Cairo power.

1. Guarantee of performance of breach of obligation

Implementation of contractual obligations is one of the important topics of contract law. If one of the parties to the contract refuses to fulfill its contractual obligations, various solutions have been provided for this issue in various legal systems. In Iranian law, the guarantee of this type of violation is not expressed in a general and general rule regarding the effects of contracts, but in the form of several legal articles in contracts such as sale, lease, lease, and terms included in the contract. The meaning of the guarantee for the implementation of the violation of the contractual obligation is the solutions that are planned to prepare the loss caused to the victim due to the non-fulfillment of the obligation. In the contracts, especially the exchange contracts, the purpose of the contracts is to exchange wealth and distribute the turnover in a fair manner, whoever commits to do something or give money, his goal is to receive an equivalent or more than what he surrenders. achieved. The requirement for access to what the parties are looking for when concluding a contract is that each of the parties to the contract fulfills the obligations they have undertaken under the contract within the stipulated time and in accordance with the contract. Violation of obligations causes the invalidity of contracts and lack of public trust in these means of wealth distribution and the regular and legal transfer of property and assets, and causes confusion and injustice in the society. Therefore, it is

necessary to try different ways to stabilize the contracts and to force the violator to fulfill his obligations with suitable legal solutions (Gandem-kar, 2016: 144).
The solutions of Iranian law in relation to the obligation of the obligee to fulfill his obligations are as follows: A-Execution of the same obligation; According to the provisions of the civil law, civil law writers generally agree that the main solution in Iranian law is the implementation of the same obligation. This is inferred from the criteria of Article (237, 376 and 476) of the Civil Law, that in case of non-fulfillment of the obligation, the obligee must go to the court and request the obligation of the obligee to fulfill the obligation. b) performance of the obligation by a third party; If the obligee is unable to perform the obligation, the court will perform the obligation through a third party at the obligee's expense (Article 238 of the Islamic Law). Debt settlement by third parties is a phenomenon that happens a lot in the world of law and financial relations between individuals. Sometimes, the third party does not have any legal and shari'a responsibility to fulfill the obligation on the part of the obligee. However, other motives such as benevolence or securing the common interest he has with the debtor make him inclined to perform this act, and sometimes even though the third party is not the main and real religious debtor. But according to the law, it is inevitable to pay the debt to the creditor (Talib Ahmadi and Kazemi Najafabadi, 1394: 152).

In general, it can be concluded from the sum of the above materials that the mere refusal of the obligee to fulfill the obligation does not give rise to the right of termination. Therefore, it is not possible to terminate the contract simply because of the non-fulfillment of the obligation in Iranian law. If the contract is not in the form of unity and is not bound to a specific time, the obligor can compel the obligee to perform the same obligation and in addition oblige him to pay and compensate for the damage caused by non-performance. This principle (obligation to perform the same obligation) has some exceptions. Like Article (402), or if the obligation is an action that is based on the obligee, and in other words, it is the responsibility of the obligee in the condition that these obligations can only be performed by the obligee and not by anyone else.
However, the solutions of French law in this regard have many differences. The guarantee of performance due to non-performance of contracts was stated in the Napoleonic Code approved in 1804 in a scattered manner and in articles 1142 to 1145 and also article 1184 BC of old France. However, in the civil law after the 2016 reforms of France, these performance guarantees have been gathered together in an orderly manner. It can be said that the reforms made in relation to the compensation for damages caused by breach of obligations have contributed the most to the recent reforms of the French Civil Code. One of the characteristics of these reforms is the increase in unilateralism (non-performance of the contract, price reduction and unilateral termination of the contract), which can be seen in Article 1217. We will also examine and compare the implementations stipulated in the laws of both countries. (Dehghan Dehnavi and Soltani, 2017: 413).

1.1. Refusing to fulfill the obligation or suspending it
Article 1219 of the French Civil Code states in this regard: "If one of the parties does not perform his obligation and this non-performance is severe enough, the other party can also refrain from performing his obligation, even if that obligation can be The demand is (now) to refuse." This provision actually expresses the right of imprisonment, which has been recognized in the laws of many countries. In Iranian law, one of the examples of this article is recourse to the right of imprisonment (Khairi Jabr et al., 2017: 98). According to Article 377 of the Civil Code of Iran, "Each of the seller and the customer has the right to refuse to surrender the goods or the price until the other party is willing to surrender, unless the goods or the price is negotiable, in this case, any of the goods or the price, whichever is the case, must deliver."
Thus, as it can be seen, the guarantee of the first performance provided in the French legal texts is not much different from the domestic regulations, and the difference is, first of all, that it is contrary to the domestic regulations, which allow the right of arrest in all cases. In the regulations of that country, the right to refuse to perform the obligation depends on the seriousness of the non-performance of the

other party. Secondly, Article 1220 of the French National Law has expanded the scope of objection of non-performance of the contract or the lien with the phrase "possibility of non-performance of the contract" by the other party. This article states: "When it is clear that one party to the contract will not perform his obligation on time and the consequences of this non-performance are severe enough for the other party, he can also suspend the performance of his obligation."
The above article is based on the theory of "foreseeable or possible breach of contract" which was first predicted in the Common Law system and today it is considered one of the important rules of international trade law (Kazemi and Zarei, 1401 : 231). However, in Iranian law, the theory of possible breach of contract and the guarantee of its performance is not very clear and there is no explicit text on this matter. This is also one of the new innovations of French law, and it seems that it is not unlikely to foresee such an institution in the internal regulations based on the right of imprisonment, the option of excused surrender and the option of Tbilisi.

1.2. Obligation to enforce the commitment
Whenever one of the parties to the contract breaks his promise and does not fulfill his commitment, the obligee faces a breach of commitment and looks for a solution to solve the problem. One of the most important performance guarantees accepted in most legal systems is the obligation to enforce the obligation (Fasihizadeh and Taheri, 1400: 216).
According to Article 1221 of the French National Law: "The obligee can request the performance of the same obligation after a formal demand, unless the implementation is impossible or there is a clear disparity between the cost of the obligation for the obligee in good faith and its benefit " to exist for the undertaker".
The new article 1221 was established in order to confirm the French judicial procedure. Before the 2016 reforms, the French Civil Code had reviewed two different articles on the guarantee of non-fulfillment of obligations: Article 1142, regarding obligations related to "doing or not doing work", which guarantees the implementation of non-fulfillment of such obligations only had determined "payment of damages". (Safaei and Rahimi, 2014: 79).
The former French jurisprudence, referring to the provisions of Article 1184, was more inclined to allow the obligee to choose one of the two methods provided in Article 1184 in case of violation of any kind of obligation (whether the obligations under Article 1142 or Article 1184) May 1184 be good. Also, based on Articles 1184 and 1160 of the old law, the obligor had the right to first demand mandatory performance of the obligation from the obligor in case of breach of obligation, and the court was obliged to accept his request and issue a verdict. However, in case it is not possible to force the execution of the same obligation, according to the former Article 1142, an order was given to pay damages. But according to the new law, the differences that were foreseen in the two articles in the old law between these types of obligations have been set aside and the possibility of "compulsory performance of the same obligation" has been established as a legal principle in Article 1221 of the new law (Khorsandian and Mohammadi Basir, 2016: 73). But there are two restrictions and exceptions to this principle:

1. First, where the obligation to perform the same obligation is "impossible", this impossibility is possible.
2. Where there is a clear disparity between the value of that obligation to the obligee in good faith and its benefit to the obligee.

This is one of the innovations of the new law. While the Supreme Court of France declared in its opinions in 2005 and 2015: "The court judge should not reject the obligor's claim that the obligee is required to perform the same obligation based on the "exorbitant" cost of enforcing the same obligation». However, the amendments of the new French law, which were carried out in order to ensure the establishment of "contractual balance", "allowing the judge to refuse to accept the contract" in the assumption that there is a clear disproportion between the cost of executing the contract for the

obligee and its benefit for the obligee have been recognized. Contrary to the old law, where the court was obliged to accept the obligor's request for compulsory performance of the same obligation, and the judge could not even reject the obligor's lawsuit due to its exorbitant cost, in the new law, it is possible to evaluate this issue and reject it for the above reasons. It is recognized for the judge (Pakbaz, 1400: 310).

But in the current law of Iran, like the provisions of the old French law, if the obligee wants to perform the obligation, considering that such provisions are not foreseen and even cases such as hardship, as will be discussed in the third chapter, are not accepted. The judge must oblige the obligee to perform and no one will have the right to refuse to perform the obligations. Thus, according to Iran's legal system, even if the obligee wants to terminate the contract, he must first refer to the ruler to force the obligee to perform the same obligation. As will be seen in the following, this is against the regulations of France, because in the laws of that country, the compulsion to perform the obligation and the request for cancellation are in front of each other, and the obligee can choose one at his own discretion. While in Iranian law, termination of the contract has an exceptional aspect and in case of breach of promise by the obligee, the obligee must seek to compel him to fulfill the obligation. In other words, in case of violation of the contractual obligation, he took help from the clauses of the verb condition and declared that the obligee must first be forced to perform the same obligation and if it is not possible to force him, he went to other legal ways (Qanvati et al., 2018. :111).

1.3 price reduction

In Iranian law and Imamiyyah jurisprudence, studies indicate the apparent non-acceptance of the "price reduction" rule in these two systems. But institutions parallel to this rule can be found in Iran's civil law as well as jurisprudential texts, which shows the willingness of the Shariah and the legislator to accept the mentioned rule. The authority to obtain arsh in the case of the option of defect (Article 422 of the National Law) and the authority to divide the price in the option of dividing the transaction (Article 483 of the National Law and Article 441), are similar domestic cases that have been established in line with the rule of price reduction and have the purpose and function are the same (Ahmadi and Taghizadeh, 1396: 113).

However, Article 1223 of the French National Law stipulates: "In case of incomplete performance of the obligation, the obligee can, after formal notice and if the obligee has not yet paid all or part of the contract amount, as soon as possible, his decision inform the obligee about the relative reduction of the price .As can be seen, in the laws of this country, while identifying such an institution as a guarantee of execution, they have foreseen a two-stage process; First, the obligor must demand from the obligor the performance of the obligation that has only been partially implemented and request him to reduce the price by the same amount. If the obligee does not fulfill the requested obligation, the obligee can inform him of his decision to reduce the price in the second step. However, if the obligee has paid the full price before not fulfilling the obligations, he can ask the obligee to reduce the price, and if he does not accept, the obligee can refer to the court and ask the judge to compel the obligee. to refund a part of the amount he has already paid. It is obvious that the basic condition of price reduction is the proportionality between the price reduction and the amount of partial breach of the contract (Daraei, 2014: 125).

1.4. Termination of the contract and receiving damages

Another guarantee of enforcement in the law is the right to cancel the obligation in case of breach of obligation by the obligee. Therefore, termination is one of the factors that lead to the collapse of obligations arising from the contract. The right of termination is one of the most important legal remedies provided for the parties to a contract, so that in case of breach of contract by one party, the other party can use this tool to prevent further damage and make the other party to the execution of the contract forces the maker or terminates the contract which is no longer beneficial for him due to the violation of the other party (Riahi et al., 2017: 247).

The basis for the termination of the obligation can be due to the condition of a contract or due to the cases of termination mentioned in the law. But what we are discussing is actually the right of termination arising from the violation of the obligation, and whether the guarantee of the execution of the violation of the obligation can be the termination of the obligation or not? The answer to this question is different in the legal systems of the two countries; In French law, based on Article 1224: "Cancellation, or the result of applying the condition of cancellation, or in the case that the breach of contract is considered serious enough, with a notice given by the obligee to the obligee or through a decision the court will be fulfilled."

Article 1224 of the new French law was inspired by articles 1-3-7 and 2-3-7 of the UOICC document and article 301:9 of the PECL document. Therefore, from now on, even without a termination clause in the contract, each of the parties can terminate the contract unilaterally and only by sending a notice to the other party in case of non-fulfillment of the obligation by the other party. The purpose of this provision is that the obligee can withdraw from a contract that has not been properly executed without waiting for the judge's intervention (Yazdanian, 2016: 165).

Iran's civil law is silent regarding the right of initial termination due to non-fulfillment of the main contractual obligation and does not contain a general rule in this case. However, there are articles in the said law that strengthen the opposite suspicion (Article 239 of the National Law). In fact, as a general rule, it can be said that there is a long-term relationship between the guarantee of breach of contract executions (Articles 237 to 239 of the National Law) and priority is given to compulsory execution of the same obligation.

Article 239 of the National Law stipulates in this regard: "If conditional coercion is not possible, the other party will have the right to terminate". So, as can be seen, the realization of the right of termination in the obligations arising from the contractual conditions in Iranian law is possible after the obligee is forced to fulfill the obligation. Therefore, it is not possible to terminate the contract simply because of the non-fulfillment of the obligation in Iranian law. If the contract is not in the form of unity and is not bound to a specific time, the obligee can force the obligee to perform the same obligation and in addition to the obligation to pay and compensate for the damage caused by non-performance. This principle (obligation to perform the same obligation) sometimes has exceptions. Like Article 402, or if the obligation is an action that is based on the obligee, and in other words, it is the responsibility of the obligee under the condition that these obligations can only be performed by the obligee and not by anyone else.

The Civil Law is based on this idea in articles 237, 238 and 239 regarding secondary obligations and in articles 376, 476, 482, 487, 492 regarding main obligations. This situation is true in the case of foreseeable breach of the contract in the first way, and the obligee cannot terminate the contract ahead of time and just by foreseeing the breach of the contract by the obligee. Therefore, contrary to French law, in case of violation of contractual obligations in Iranian law, the obligee cannot first request the termination of the contract, but must first request the mandatory performance of the obligation, and if the performance is impossible, he can rely on the termination. Also, contrary to French law, where the implementation of obligations can be suspended simply because of the "possibility of breach of contract" in the future, there is no such provision in Iranian law, and it is not possible to suspend the implementation of obligations simply because of the possibility of non-violation of the contract. (Crothers, 2109: 624).

1.5. Request for compensation

In Imami jurisprudence, according to some jurists, the primary and main guarantee of breach of contractual obligations is the obligee's obligation to fulfill the same obligation. In Iran's legal system, the legislator has specified the necessity of compensation in civil law and some other laws. According to Article 221 of the Civil Code: "If someone makes a commitment to do something or makes a commitment to refrain from doing something, in case of violation, he is responsible for the damage of the other party, provided that the compensation for the damage is specified and the commitment

of the mystics is in the form of a specification." or as a guarantee according to the law". According to the mentioned article, the demand for damages will be if the will of the parties, custom or law has specified it (Yazandian, 2017: 125).
However, it seems that according to the legal rules and certain customs regarding the need to compensate for the loss, there will be no doubt in the scope of the mentioned article. Therefore, contractual civil liability is a legal rule, and the benefit of specification and custom will be related to damage beyond the normal. Also, the need to compensate damages from Article 226 of the Civil Law and Article 515 of the Islamic Law. A. d. M. can also be inferred (Khorsandian and Mohammadi-Basir, 2016: 73).
Article 1231 of the French Civil Code stipulates compensation for damages caused by non-performance of the contract: "In case of non-performance of the contract, the obligee is entitled to receive damages only if he has previously demanded the performance of the contract from the obligee within a reasonable period of time, except in cases where the violation is certain".
According to this article, in French law, the principle is that filing a lawsuit against the obligor depends on the obligor's formal demand to fulfill the obligation. However, in some cases it has been exempted from this requirement. It seems that, despite the fact that in the legal system of both countries, compensation for damages can be considered as a guarantee of non-performance of the contract, but in Iranian law, compensation for damages is not dependent on the previous demand for the performance of the obligation and is only a legal, contractual or customary statement in and this is enough.

2. Basics of contractual excuses

Regarding the theoretical foundations of contractual responsibility, various theories have been presented in the legal systems and these theories have often crystallized in the judicial procedure of the countries. In this section, we will discuss the theories presented in this case:

2.1. Roman-German and Common law

1. Justice-based solution theory; This theory is derived from another case (Hirji Mulji) in 1926. In this case, the court stated about the basics of contractual excuses, "a tool by which the principle of the sanctity of contracts is allocated with certain exceptions that are appropriate for justice and fairness". According to this theory, when the court declares a contract dissolved due to a sudden event, it seeks to achieve a fair and conventional solution. In criticizing this theory, they have said that the effect of sudden events on obligations is the dissolution of the contract; However, sometimes the fair solution is to divide the loss between the parties and not to dissolve the contract (Puelinckx, 2019, p. 550). Regarding this theory, it can be said that nowadays it has more acceptance than other theories, and in the conditions where the contract faces the difficulty of implementation, due to the fact that it restores the balance of the contract, it can better serve the interests of the parties.

2. Implicit condition theory; the oldest theory about the justification of contractual excuses is the implied condition theory, which was first explicitly proposed in the Tamplin case by one of the judges of the case. Based on this, the reason for the dissolution of the contract in the event of a sudden event is that it is implicitly stipulated in every contract that if such events occur, the contract is not binding. "No court has the right to dissolve the contract, but when the parties to the contract do not intend for it to be absolute, the courts will not consider that obligation to be absolute" (Rimke, 2018, p.920). This theory, based on the principle of freedom of contracts, is based on the justification that "the future of the contract is determined based on the obligations agreed at the beginning of the contract" (Stone, 2002, p. 386). Of course, the opponents of the implicit condition theory consider it unrealistic and "illusory". According to him, there are two logical and practical objections to this theory; First, it is not logically correct to say that the parties implicitly intended to dissolve their contract due to the occurrence of a sudden event, while basically they did not expect and did not foresee that event, and even if they had foreseen it. It cannot be said that their intention was to terminate the contract as a

result of that event. On the other hand, it has been said that this is not unreasonable, because when we allow the parties to explicitly include the clause of the power of Cairo and its similar clauses in the contract, it does not logically prevent this clause from being included in the contract implicitly. be inferred Second, the theory is scientifically flawed, which complicates the analysis of what the court actually does. According to him, in fact, what the court does is to examine whether there have been events in the case in question that make it unfair to oblige the parties to contractual obligations or not (Thomas, 2002, p.108).

3. Of course, some believe that what is meant by an implied condition is a type of implied condition and not a personal one. In the sense that it can be concluded from the nature of the contract that the parties, as ordinary persons, do not intend to consider themselves bound by a contract whose conditions have undergone such extensive changes. But in rejecting this understanding of the implicit condition theory, it has been stated that the basis of this condition is the arrangement of giving effect to the intention of the parties. In other words, the basis of implicit condition theory is personal intention (Treitel, 2003, p.921).

4. theory of structural condition or legal condition; This means that the law imposes a condition on the contract to ensure justice. Therefore, according to this point of view, contractual excuses are rooted in the law and not the will of the parties. Of course, the criticism of this view is that the circumstances or the will of the parties may impose a responsibility on the obligee that goes beyond the legal guarantee, so the law cannot be considered as the source of all the conditions that ensure justice.

2.2 Law in Iran

In Imami jurisprudence and Iranian law, several principles have been stated by jurists and jurists regarding the excuses for delaying the implementation of commitments and delaying implementation, the most important of which are discussed below.

1. The impossibility of meeting and the height of the inconsistencies; The validity and corruption of the contract are two mutual things, whose opposition is of the nature of non-existence and queenship. In other words, correctness and corruption mean the completeness or incompleteness of the contract in terms of components and conditions and the absence of obstacles, and for this reason, there are contradictions in the ruling that the height or the union of both is impossible. In this way, if one of the parties is unable or unwilling to perform the contract, it will not be subject to the principle of necessity of the contract and "ofo by contract"; Because the command to the task of Malaitaq or the command to a matter whose implementation is impossible, is disrespectful and causes disobedience. With this explanation, a contract that falls into such a situation will not be correct, because one of the conditions of a valid and valid contract is the ability to enforce it. If the power of execution does not exist at the time of the contract, the contract will be void, and if the power to perform is lost during the performance of the obligations, the contract will be terminated. So, as mentioned, validity and invalidity are opposites.

2. The rationalists believe that the method is based on the idea that if the fulfillment of obligations is impossible, the contract is void and no legal effect can be attributed to it.

3. Oral commitment; Some have considered the bases of contractual excuses to be justified by the term "tacit contract". In the opinion of this group, such a contract is basically void and does not create an obligation due to its superficiality and slander.

4. Our duty is unbearable; According to this opinion, the validity of the contract depends on being able to comply with its provisions and requirements. Therefore, if its implementation is inexcusable and impossible, such an obligation is negated and the ruling of necessity is removed.

5. the balance of surrender versus surrender; according to this opinion, the revelutionism is placed in front of each other and the parties receive something else in exchange for what they give. Therefore, if this balance is disturbed, the necessity of fulfilling the contract is eliminated (Dara'i, 2013: 111).

3. Contractual excuses

Contractual excuses are matters based on which the parties to the contract can legally exempt themselves from the consequences of failure to fulfill their obligations. What seems to be the reason for the realization of the excuse is that the performance of the obligation is outside the scope of the authority of the obligee. The mentioned situation in different legal systems under titles such as; Impossibility, impracticality, force majeure, change of circumstances, etc. have been explained and investigated. In this chapter, we will introduce and examine the excuses that, if they are fulfilled, under the conditions that will be mentioned later, the obligee will be exempted from compensation. In order to better identify and analyze in this research, excuses are divided into two types, which are voluntary excuses and involuntary excuses for exemption from compensation, each of which will be examined in detail below.

3.1. Voluntary excuses

In the case of involuntary causes, first of all, their occurrence was beyond the will of the parties; Secondly, their realization, depending on the case, will make the implementation of the contract impossible or make the commitment too difficult. But in voluntary excuses, firstly, their realization is directly related to the will of individuals. Secondly, such excuses do not make the contract unenforceable or difficult to implement; Rather, the primary effect of these excuses is exemption from compensation, and perhaps the obligation is enforceable, but compensation is excluded and such a claim cannot be made. These reasons can be examined in three different categories; First, "responsibility limitation or non-responsibility". Second, "damaged actions" and third, "the right to refuse to perform the obligation". In this way, each party to the contract can stipulate that if he faces any obstacles in the way of implementation, even though he is willing, he will not be responsible for the other party (waiver condition) or his responsibility will be reduced (restrictive condition). Either as a result of the actions that the injured party has committed, he has caused damage to himself or has expanded the scope of the damage with his actions. For this reason, the obligee's responsibility is reduced to the same extent. It is also possible that by voluntarily preventing one party from fulfilling its obligations, the other party can also prevent the implementation (right to refuse to fulfill the obligation).

3.2. Involuntary excuses

Involuntary reasons affect the contract in three ways; In the first case, they generally make the execution of the contract impossible in such a way that the fulfillment of obligations becomes practically impossible. In the second case, they only make it difficult to execute the contract. The first state is known as the "impossibility of execution" situation, which in various legal systems and in regional and international documents, with terms such as "Cairo authority", "termination of contract execution" and "excuse of loyalty to contract", is known. While the second state is known by concepts such as "hardship", "rule of negation of difficulty and embarrassment", "unpredictable reasons", "extreme unexpected difficulty" and "excessive difficulty" which indicate the situation of "difficulty of implementation" "Contract". In addition to the mentioned cases, a third situation is also envisaged, the impact of which is not on the principle of the obligation and its implementation, but its main position is in the exemption from compensation of the obligee who has committed violations and excesses in the implementation of his obligations. This institution is also known as "the passage of time in legal and commercial claims". In this part, we will examine one of the types of involuntary reasons that fall under the power of Cairo (force majeure), which is sanctions.

4. Citing "sanction" as an example of Cairo's authority

Force majeure is a civil law concept derived from Roman law. Such a concept was accepted and recognized by countries with civil laws, especially France. When a force majeure event occurs, the parties to the contract are excused from fulfilling their obligations despite the express provisions of the contract. According to French civil law, an event is considered force majeure if it is foreign,

unexpected and unavoidable (Osadare, 2009). The term "force majeure" is the translation of the French term "force majeure" which was apparently used for the first time in the French civil law (Napoleon Code) and it is also called "force or threat or irresistible pressure" (Safa'i, 1402: 113).

In French law, force majeure has a general and a special meaning. Force majeure in the general sense is any external event (outside the obligee's power). Force majeure means that it includes the act of a third party and the obligee's act that have the two mentioned qualities. But force majeure, in a special sense, is an unnamed incident (that is, not attributed to a certain person and caused only by natural forces), unpredictable and unavoidable. The power of Cairo, both in the general sense and in the specific sense, is considered as an obstacle to civil liability, because it causes the disconnection of the causal relationship between the committed act and the harm caused.

In some cases, such as Article 1148, the French civil law has used the words "power of attorney" and "unforeseen incident" together as obstacles to liability. It seems that these two have differences with each other. Therefore, some French jurists have distinguished between force majeure and an unforeseen event and have said that an unforeseen event is an internal event that is related to the activity of the obligor or his company, such as fire, product defect, derailment of the railway line. and strike in some cases. While force majeure is an external event such as flood, storm, etc. (Ebrahimi and Oyarhossein, 2011: 6). Therefore, when the incident cannot be attributed to a person, he cannot be held responsible (Safaei and Rahimi, 2014: 218).

However, in today's French jurisprudence, there is no difference between these two concepts and both are used synonymously. In international law, the word force majeure is usually used in a general sense, which includes both force majeure in a specific sense and an unforeseen event. Force majeure in the general sense is different from the term "force majeure". The second term only includes unusual events that have natural causes and occur without human intervention. While force majeure has a broad meaning and includes some incidents caused by human actions (Pakbaz, 1400: 300).

We said that the power of Cairo exempts the obligee from the execution of contractual obligations and responsibilities. Of course, Cairo's power must make the execution of the contract impossible, so if it makes the execution of the contractual obligations difficult, it will not be exempted from the execution of the obligation. For this reason, it can be said that the loss of the specific object as well as the loss of all the general persons and its rarity due to the authority of Cairo, cancels the obligation, but if only the general property that is considered for the execution of the contract is lost, the preparation of the example Other options are possible for the obligee. Therefore, the execution of the contractual obligation is not possible. Also, where the execution of the obligation by a third party is possible, the authority of Cairo will not exempt the obligee.

Sanction is a systematic refusal to establish social, economic, political or military relations of a government or a specific group of governments to punish or create acceptable behavior. Despite this, the specific application is boycotted. Today, economic sanctions have become very important as a tool to ensure the implementation of international rules and also to maintain and restore international peace and security. This action is basically legitimate from the point of view of international law, unless its purpose is to exert pressure and domination on other countries or contradict the obligations of the countries (Ebrahimi and Oyar Hossein, 1391: 12).

Different legal systems have adopted different views regarding embargo as one of the examples of Cairo's authority. It seems that if there were no sanctions at the time of the conclusion of the contract, or the possibility of such a situation was not imagined, then the initiation of sanctions that face the project with fundamental problems can be considered as force majeure. However, if at the time of the conclusion of the contract, the country was in a state of relative sanctions and the possibility of stricter and more comprehensive sanctions was given, these sanctions cannot be considered as force majeure and the obligee cannot fulfill the obligation (Ebrahimi and Oyar Hossein, 2011: 12).

In the French legal system, some people justify the imposition of sanctions during the execution of the contract through "unforeseen events" and believe that sanctions can force the parties to renegotiate. According to them, the judge can describe the lifting of sanctions as an "implicit

condition". According to the principle of "good faith", some believe that in the event of a hard slope due to a change in conditions, the obligation to negotiate is one of the requirements for the implementation of the contract in good faith. According to the ruling of the Supreme Court of France on November 3, 1992, in case of unexpected circumstances, the creditor is required to renegotiate. Of course, whether sanctions are an unexpected situation or not depends entirely on the judgment of the judge (Golshani and Hosseini Modares, 2019: 104).

Regarding sanctions, there are two main views among Iranian courts on how to deal with this factor as one of the examples of the Cairo power. Some analyze it as the power of Cairo, and another group believes against this opinion. For example, branch 81 of the Tehran General Court of Law decided as follows in the document No. 00522 dated 7/8/93: "It is impossible not to foresee the application of sanctions, because the application of sanctions has been pending for a long time." It has been reviewed and it was predictable at the time of signing the contract. This cannot be considered force majeure; Because force majeure cannot be predicted. The procedure of other courts is the same. For example, Branch 38 of the Tehran General (Legal) Court considers the embargo to be predictable and the Cairo authority does not consider it. In the decree No. 868 dated 25/9/92 issued by this branch, we read: "If the start and continuation of the embargo from the beginning of the Islamic Revolution onwards and with the start of the military embargoes had somehow started and continued until the conclusion The contract and the mentioned sanctions have been extended to other cases and civilian issues as well. Also, in the decree No. 1229 dated 12/27/92 issued by the 38th branch of the Tehran General Court of Law, in this regard, we read as follows: "The claimant's appeal to unforeseeable events is also a presumption of fulfillment of the subject of the contract." Because the petitioner's reference to Iran's economic sanctions and sanctions against the Islamic Republic was not an accident or a new thing, but since the beginning of the glorious Islamic revolution, the effects of sanctions have cast a shadow on Islamic Iran, and on the other hand, although the subject of the pledge of manufactured goods It is stipulated that England, the petitioner could supply the same goods made in England through other countries..."

As it can be seen, one of the reasons for not accepting the embargo as one of the examples of force majeure is its predictability when making commitments, and for this reason, it is not considered to be the power of Cairo, but in addition, it is the basis of the element They also open the possibility of disposal to the story. Of course, naturally, the embargo by commercial companies cannot be dismissed, but these courts believe that the effects of the embargo can be dismissed. For example, according to the contract, it was supposed that the company B. Mr. S. bought goods from Canada and delivered them. to give Despite the end of the contract, Company B. Due to sanctions, he cannot fulfill his commitment. Therefore, during a lawsuit, he wants to return the guarantee of the above contract. The 38th branch of the Tehran General Court of Law, while handling the case, cites the predictability of sanctions and the possibility of removing its effects, and states that, in the current situation, for the petitioner as a commercial activist, sanctions Wasn't the country of Iran predictable? The court's answer to this question is given in the document No. 1232 dated 12/27/2013 as follows: "The claimant's appeal to unforeseeable events is also presumptuous of the fulfillment of the subject of the contract, because the claimant's argument regarding the existence of economic sanctions considering that The existence of sanctions against the Islamic Republic is not a new and accidental act, but the country of Iran has been under sanctions since the beginning of the Islamic Revolution. On the other hand, although the subject of the obligation of the goods was related to the creation of a unique country, the claimant could have invented the same unique product through another country and acted in providing and fulfilling the subject of the contract and economic sanctions Effective in performing or not performing the subject of commitment is not considered as an example of the authority of Cairo. Because in recognizing the existence of force majeure or Cairo's power, it should be unavoidable and unforeseeable and make the execution of the contract impossible if this is not the subject of the discussion...".

In conclusion, it seems that not calculating damages is more logical and more consistent with our legal texts since the time of the sanctions. Because "attributing the non-fulfillment of the obligation

to an external and unbalanceable event destroys the assumed causal relationship between the committed act and the fulfillment of the obligation and shows that the debtor has not broken the covenant. For this reason, he should not be responsible for the damages caused by it" (Katouzian, 1401: 223). In other words, attributing the non-fulfillment of the obligation to an external and unavoidable event causes the causal relationship between the obligee and the non-fulfillment of the obligation to disappear. For this reason, the obligor should not be held responsible for damages. This opinion is also compatible with legal texts, Because according to Article 227 of the Civil Code, "the violator of the obligation is sentenced to pay damages when he cannot prove that the non-fulfilment was due to an external cause that cannot be attributed to him". Also, according to Article 386 of the Trade Law: "If the merchandise is damaged or lost, the transport operator will be responsible for its price unless he proves that the loss or loss... was related to incidents that no careful operator could have prevented." to prevent the contract of the parties can specify an amount lower or higher than the full price of the goods for the amount of damages. Incidents that no careful administrator could have prevented refer to Cairo's power.

The criterion of clause two of Article 56 of the Maritime Law can also be used in this regard. According to this article, "the ship and the cargo operator will not be responsible for the loss or damage caused by the following causes: c- dangers and dangerous accidents or accidents at sea and navigable waters, d- natural disasters, e- war and its results , f- Operation of the enemies of the society, g- Detention or stopping of the ship as a result of coercive measures or due to the order or action of rulers or people or judicial authorities, h- Quarantine restrictions, j- Strike or closing of workshops or abstinence or preventing work in whole or in part for any reason, e.g. rebellion or disturbance" according to Article 131 of the Maritime Law: "when the ship cannot due to the prohibition of trade with the destination port or the economic blockade of the destination port and or moves due to force majeure... neither side will have the right to demand damages from the other side.

Another case in which international sanctions were cited as force majeure; The decision issued in the case is famous in France. In this case, which again refers to the judicial procedure, Technoline as the buyer signed a sales contract with Roskarantin as the seller. The goods should be sent in three shipments. Roskarantin Company delivered two of its three shipments, but the third shipment was not possible due to the issuance of an order by the Russian government prohibiting the import of livestock and the so-called livestock embargo. Tencoline, as a buyer, submitted a request to the court for the return of part of the deposit amount plus its interest. Finally, the court ruled that the country of origin of the livestock was not mentioned in the contract between the buyer and the seller. On this basis, the goods could have been supplied by any seller anywhere in the world, the supplier company should have made all the plans to deliver the goods subject to the contract by the deadline stipulated in the contract. to do, since he was negligent in carrying out such planning, the order of the Russian government in this regard cannot be considered as a force majeure and the seller must compensate for the damage. (Ismaili Fard et al., 1400: 39).

The conditions related to force majeure can be the explicit exclusion of economic sanctions from the examples of force majeure or considering that sanctions are usually predictable, more emphasis should be placed on the unpredictability of force majeure. Also, since the application of economic sanctions can lead to the implementation becoming difficult or costly, although the implementation is not yet impossible, the obligor may rely on this significant and out-of-control increase in costs that upset the contractual balance. Request to adjust the contract. For the country or the nationals of the country that are the target of sanctions and the possibility of imposing new sanctions, the condition of force majeure is appropriate, which does not include the sanctions and explicitly excludes the economic sanctions from the scope of the said condition. In this case, imposed sanctions, even if they have all the indicators of force majeure, neither under the contractual condition nor the general legal principle of force majeure, will not grant an exemption. Because the contract has explicitly excluded it and it cannot be ruled against the explicit will of the parties. Economic sanctions that exclude the fulfillment of the obligations of the parties under this condition and cannot be a cause of force majeure

or any other reason for granting exemption from implementation, it should be noted that the bargaining power of the parties is very effective in including such a condition. is to persuade the other party to accept it. Also, if the party to the contract whose country is under embargo suggests that the fulfillment of his own obligations will be more affected, he should be more careful about including such a condition (Shaarian and Moulai, 2011: 54).

According to the contents mentioned above, if we want to examine the sanctions as one of the factors of force majeure in our country, it seems that due to the implementation of comprehensive sanctions by the United States and European countries against Iran. And the possibility of imposing more and heavier sanctions, therefore sanctions cannot be introduced as force majeure factors in Iran. Sanctions should be accepted as one of the dangers and risks in commercial contracts. The distribution of this risk among the parties should be fair and equitable. so that no party is victimized. Therefore, in the assumption that the sanction is not part of force majeure, in the "Civil Law" system, due to the fact that in the case of uncontrollable events and in the absence of an alternative, the possibility of the obligation to perform the obligation is removed due to the duty of malaytaq, therefore citing the violation No contract will be possible. Therefore, we must find a legal solution through the sterility of the contract, or the impossibility of execution, or the difficulty or fundamental change of circumstances.

conclusion

The guarantee of performances stipulated in Iranian and French laws have differences with each other. Iranian courts, if one of the parties refuses to fulfill their obligations, by referring to the principle of necessity in contracts and considering it to be based on reason and inspired by the provisions of the condition of the verb in the implementation of obligations, as well as the exception of the provisions of the option of delaying the price, the principle placed on the mandatory performance of the obligation and the right of termination is not realized for the other party simply because of the obstruction of one party. Thus, in the first place, the obligation of the obligee must be demanded from the court, and if the obligation is untenable, he must perform the action by someone else at the expense of the obligee, and if the execution by others is also untenable, then the obligee will have the right to terminate the contract. However, in French law, Article 1217 provides for the guarantee of multiple performances that are within each other, and the obligor can choose one at his discretion. These performance guarantees include; a) Refusal to perform the obligation or suspend it if there is a possibility of breaching the contract in the future. b) Compulsory execution of the contract. c) Price reduction request. d) termination of the contract. e) Compensation. Refusal to fulfill the obligation is actually the right of imprisonment foreseen in Iranian law, and in this respect, there does not seem to be any difference between them. But the right to suspend for the mere possibility of breach of contract Reasons for exemption from damages are exceptions to the principle of the necessity of contracts, according to which the parties to the contract can be freed from the effects of negligence in the implementation of contractual obligations. Reasons for exemption are actually excuses that occur during the execution of obligations. Some of these excuses are voluntary and some are involuntary. in voluntary excuses; 1- The contracting parties, by including the "limiting condition or exempting liability", stipulate that in case of obstacles in the way of the contract implementation, they will not have any responsibility towards the other party, or this responsibility will be reduced. This possibility has been mentioned in Iranian laws in an exemplary way and is generally foreseen in the principles of international commercial contracts and the principles of European administrative law, and according to special regulations for air transportation operators and commercial sellers, exceptions are made. has been 2- Obstruction of the obligor from execution and the obligor's right to refuse execution, which derives from the legal principle of solidarity in the execution of contracts and represents a kind of right of imprisonment in the common law, Roman-Germanic, Imami jurisprudence and Iranian law systems. Invoking it, one party to the contract can not fulfill his obligation if the other party refuses to fulfill his obligation; A matter which in Iran's civil law, despite being specified lease contracts, is necessary to be stated as a general provision in exchange contracts.

But involuntary reasons affect the contract in two ways; In the first case, they either make the execution of obligations impossible or impossible, or they make the execution of obligations difficult. The first state is known as "impossibility of execution" which means "Cairo's power", "failure to execute the contract" and "excuse the fulfillment of the contract". But the second case is examined under the title of "unforeseen incidents", "hardship", "rule of negation of hardship and hardship", which indicates the difficulty of executing the contract, which is related to the situation of "change of circumstances". it is famous.

In relation to sanctions, it can be stated that under certain circumstances, sanctions can be an obstacle to the implementation of contractual obligations, and accordingly, it can provide reasons for "exemption" of the obligee from compensation. However, as mentioned, one of the conditions of Cairo's power is unpredictability, now if we want to consider embargo as one of the examples of Cairo's power, due to its predictability, it cannot be considered as force in our country. Major should be introduced. Because the country is currently under severe sanctions and the possibility of more sanctions is also envisaged. Therefore, if they enter into a contract without including the condition of non-responsibility or limitation of liability, the sanction can make its implementation impossible or with great difficulty, then the sanction cannot be considered as one of the exemption factors. It will be considered that the obligor has accepted the risk arising from the implementation of such a contract.

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