Artículo de investigación

A Comparative Study of Commitment to Sale and Its Sanctions in the Laws of Iran and France

Un estudio comparativo del compromiso con la venta y sus sanciones en las leyes de Irán y Francia

Um estudo comparativo do compromisso com a venda e suas sanções nas leis do Irã e da França

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Written by:
Arghavan Hajian
Master of Private Law, Allameh Tabatabaei University,Tehran,Iran.

Abstract

The current research attempts to survey the comparative impacts of commitment to sale and its sanctions in Iran and France. The asked question in current research was what is the legal nature of commitment to sale and its sanctions in Iranian and French law? The research findings indicated that in Iran's law, commitment to sale is a kind of uncertain contract and can be explained in the form of a preliminary agreement, that also its sanction, is an obligation to fulfill the commitment and compensation. Since the commitment to sale has been contracted by both parties, this obligation is also binding for both parties under the Articles 10 and 219 of the Civil Code and pacta sunt servanda (agreements (and stipulations) of the parties (to a contract) must be observed) and the promisee can, by obligation of the initial commitment of the promiser, ask for the fulfillment of the main commitment. In such cases, the situation of the collateral is such that the second transaction has been made correctly, and the promiser is needed to pay compensation to the promisee. In French law, "commitment to sale" has been accepted and has legal rights just like the preliminary agreement. In the law of this country, it is vital to obligate its Sanctions and compensation as the most important means of sanctions of commitment to sale. In current research, a descriptive analytical method has been used.

Keywords: commitment to sale, sanction, Iran law, French law

Resumen

La investigación actual intenta examinar los impactos comparativos del compromiso de venta y sus sanciones en Irán y Francia. La pregunta planteada en la investigación actual era ¿cuál es la naturaleza legal del compromiso de venta y sus sanciones en la legislación iraní y francesa? Los hallazgos de la investigación indicaron que en la ley de Irán, el compromiso de venta es un tipo de contrato incierto y puede explicarse en forma de un acuerdo preliminar, que también su sanción, es una obligación de cumplir el compromiso y la compensación. Dado que el compromiso de venta ha sido contraído por ambas partes, esta obligación también es vinculante para ambas partes en virtud de los Artículos 10 y 219 del Código Civil y pacta sunt servanda (acuerdos (y estipulaciones) de las partes (a un contrato) debe ser observado) y el prometido puede, por obligación del compromiso inicial del prometedor, solicitar el cumplimiento del compromiso principal. En tales casos, la situación de la garantía es tal que la segunda transacción se ha realizado correctamente, y el prometedor es necesario para pagar una compensación al prometido. En la legislación francesa, el "compromiso de venta" ha sido aceptado y tiene derechos legales al igual que el acuerdo preliminar. En la ley de este país, es vital obligar a sus sanciones e indemnizaciones como el medio más importante de sanciones de compromiso de venta. En la investigación actual, se ha utilizado un método analítico descriptivo.

Palabras clave: compromiso de venta, sanción, derecho iraní, derecho francés.

Resumo

A pesquisa atual tenta avaliar os impactos comparativos do compromisso com a venda e suas sanções no Irã e na França. A questão colocada na pesquisa atual era qual é a natureza legal do compromisso com a venda e suas sanções nas leis iraniana e francesa? Os resultados da pesquisa indicaram que, na lei do Irã, o compromisso com a venda é um tipo de contrato incerto e pode ser explicado na forma de um acordo preliminar, que também a sua sanção, é uma obrigação de cumprir o compromisso e compensação. Como o compromisso de venda foi contratado por ambas as partes, esta obrigação também é obrigatória para ambas as partes nos termos dos artigos 10 e 219 do Código Civil e pacta sunt servanda (acordos (e estipulações) das partes (para um contrato) deve ser observado) e o prometido pode, por obrigação do compromisso inicial do promotor, solicitar o cumprimento do compromisso principal. Em tais casos, a situação da garantia é tal que a segunda transação foi feita corretamente, e o promotor é necessário para pagar uma indenização ao prometido. Na lei francesa, "compromisso com a venda" foi aceito e tem direitos legais como o acordo preliminar. Na lei deste país, é vital obrigar as suas sanções e compensações como o meio mais importante de sanções do compromisso de venda. Na pesquisa atual, um método analítico descritivo foi usado.

Palavras-chave: compromisso com a venda, sanção, lei do Irã, lei francesa

Introduction

The commitment to sale is a preliminary agreement or advance agreement between the parties to enter into a final contract. In other words, the subject of the contract of commitment to sale is not legal action, but is an obligation that the parties undertake to conclude and create in the future. In fact, in cases that the buyer and seller intend to do the transaction, but have not still made the necessary actions, they will contract, in which the two parties undertake to make the transaction with certain terms and within a specified time limit. (Katouziyan, 1995: 56). Based on the aforementioned assumption, one party is called "promiser", which, for instance, builds a building with a well-defined characteristics and, after its construction, give it t "promisee" as his/her property. In other words, in such a sight to the contract, for instance, the pre-sale of the building, the "promisee", is not the owner of the building (chose in possession) at the time of the contract and has a chose in action for promiser that according to it, the promiser must build a building in a certain place with defined characteristics and by a contract of sale give it to promisee in the future. In blacks law dictionary[36] and according to the definition of the word of "promise" it is said that declaration of intention for doing an action or refusal to perform it in a specific manner, that by declaring it, another action will justify that a commitment has been made. Also in French language [37] The term "Promesse decontartou avant" expresses the obligation to conclude the contract. (Katibi, 1984, p. 282) in commitment to sale, the actual creation of the public is not the will of the parties, but the emergence of a joint commitment to its creation in the future. (Shahidi, 2008: 26) In other words, in the commitment to proclaim, transfer, are the result of another contract that the owner accept its writing, and the first contract that the commitment to proclaim has been done within it, has been agreed as a preliminary contract for the original contract. (Katouziyan, 2010: 49) The fundamental question that arises in this regard is the legal nature of commitment to sale in Iran and France and its sanctions? The current article wants to survey and answer Moore's question. In the same vein, first of all, the nature of the commitment to sale rights has been expressed and then its sanctions has been reviewed.

1- Nature of commitment to sale

In current context, the legal nature of commitment to sale has been surveyed in Iran law.

[1]-Blacj& Law dictionary

2-The manifestation of intention to actor retain from acting inspecified. Manner, converyed in such a way that anither is justified in understanding that a commit has been made…?

1-2 Nature of commitment to sale as certain and uncertain contracts

The contract is divided into a certain and uncertain contract in the term of its nature. In the definition of certain contracts, it is possible to say that they are the types of contracts in the name of a particular law, and it defines the terms of its concluding and its impacts, like the contract of betrayal. Uncertain contract is that it does not have a particular name or form, and its conditions and impacts are determined in accordance with the general rules of the contracts and rule of the law like the contract for the publication of the book. (Katouziyan, 2010: 115) The question is, commitment to sale is a certain contract or an uncertain contract. In response, it must be considered that in Iran's law, totally, the promise of bilateral contracting is considered legal in nature as a contract. (Katouziyan, 2009: 380) it means that the parties have entered into a contract in their preliminary quest. In fact the contract is a precondition for the conclusion of the original contract. Even if each of the two parties mutually interacts with the provisions of the original contract and the terms of the contract, and the happening of the original contract is subject to another will, then in fact what is enforced will be considered as an contract, but have not been considered as two independent unilateral and if we accept that in the latter case, what is happening is not a contract, consequently, the realization of the main contract has been hindered too since there is not any possibility of a merger of two wills and the conclusion of the main contract analytically. When it became obvious that the contract was bilaterally promised, the question arises as to whether the contract is of certain contracts or the type of the uncertain contracts.

In Islamic law and among the early jurists, and even some contemporary jurisprudents, the famous and practicable saying, is that only authentic and accepted contracts are the same as the one that has been named by the holy book and therefore if any agreement contracts has been done except current contract, it is not valid unless it has been agreed upon by a certain contract. These are the titles of early jurisprudential books and even some contemporary jurisprudential books, that only deal with the description and extension of the known contracts. Also the reputation of such an idea (despite the provisions of Article 10 of the Civil Code) has infiltrated the Iranian Supreme Judicial Authorities. For instance, the Supreme Judicial Council Supreme Council (Supreme Council of the Supreme Council) (No. 6,962 / 1-6 / 2/62), that refers to the validity of usual preliminary agreements as follows :

"What is merely a preliminary agreement and there is no Specific order for it in in form of contract and has not been committed for , is not legally or religiously valid, and the courts can not enforce the parties." (Shahri, 2005: 149). This directive has also been effective in issuing verdicts of courts. For instance, it is the second branch of the appeals court of the province of Semnan, issued on 7/7/687. Given the legitimate social and economic needs, such an idea is now is not accepted. Some contemporary jurisprudents have accepted the authenticity of the concept, which does not fall into the form of any specific contract. (Khoyee, Bita, 1993: 401) The authors of Iran's Civil Code have made Article 10 of the Civil Code too, in conjunction with the extension of the terms and conditions of certain contracts, for emphasizing on the uncertain contracts. This article expresses: "Private contracts with those who have signed, is binding if it is not explicitly opposed the law."

In legal sources, the promise of a bilateral contract for having a contract is not discussed as any of the certain contracts, which means that the contract is one of the types of uncertain contracts. In Iran's civil law, the promise of bilateral agreements to contract under the title of a certain contract has not been surveyed. The consequence is that the promise is i٧n the form of Article 10 of the Civil Code and as one of a variety of uncertain contracts.

In fact, commitment to sale involves mutual obligations of each of the parties and contains sanctions related to the violations of both parties' obligations in the document, therefore it seems that commitment to sale can be considered an independent contract and a full two-way agreement. ; An agreement and an contract that does not have a specific title in civil law and other laws, and so it is as one of the instances of an uncertain contracts. (Rostami, 2011: 116)

2.2 The nature of the commitment to sale as unilateral

unilateral in the Arabic language has come from the meaning of making and realizing something. (Ghasemzadeh, 2011: 19), also unilateral in the Persian word means, puting, throwing, storming, storming, capturing someone, and ... (Moein,

1992: 228). But in the legal term, unilateral means a something different from it literal meaning, which is independent consent in establishing the intrinsic impact. (Jafari Langroudi, 2009: 154) one side-unilateral as an action In the legal term, have two meanings of the word and the name of the object or product. In the sense of an infinitive, unilateral is the creation of the legal nature of the will of a person, like the creation of the ownership of the share of the sold goods, against the equivalent amount of the transaction given to the buyer by the preemptor (Article 808 of the Criminal Code) in an objective meaning, unilateral is an one side legal nature of the law is predicted and validated by the unilateral decision maker, for instance, the nature of the preemption resulting from the creation and application of preemption in the world of law, is unilateral in the sense of a product. (Shahidi, 2011: 43)

The meaning of the promise of concluding a contract is, in fact, a commitment, it must now be surveyed what is the legal nature of the unilateral promise of contracting . In other words, is the unilateral promise of concluding a contract a type of unilateral or unilateral legal action, or indeed a Is a bilateral legal act or contract, or that it has a various nature. Iran's lawyer is not bound by the promise of unilateral conclusion of a contract and in none of the legal provisions regarding the contract or unilateral promise of unilaterally concluding a contract, expressly decree It has not been ordered. So, it is vital to look for an answer for above question by referring to juridical and legal sources .

In the Imamiyah jurisprudence, given the similarity between the terms of the initial condition and the one side promise for an agreement, one can infer the opinion of the jurists on the legal nature of the one side promise for an agreement by examining the legal nature of the initial condition. Most of the Imamiyah jurisprudence seem to consider the initial terms as instances of free contracts, and conclude that any commitment and obligation are subject to the definition of a contract, that is to say, the general "the persons who obeyed the contracts" will extend to them .Since according to Arabic language the 'A' and 'L' letters in the word al-oghod , won't refer to the known contracts at the time of legislator and a comprehensive, comprehensive and won't contain any kind of contract (Najafi khansari, 1997: 103; Mohaghegh Damad, 2009: 52). It is intended to clarify the terms of the initial terms of the contract. A party can provide a supplier's consent and satisfaction by a large decision. It is an initial need for a contracting structure and a two-side agreement.

In contrast to this idea some jurisdictions believe that each two side agreement even if it is made a commitment for both or one of the parties and they are binding for it and the other one accept it, it is not considered as a contract that to be included in pacta sunt servanda (agreements (and stipulations) of the parties (to a contract) must be observed), since the contract is not the subject to the issue (Mousavi Khomeyni, quoted by Ghanawati et. al, 2000: 101).

It may be conceivable that the reason for not considering such conditions, in accordance with the current point of view of the contract, is that, Basically, any commitment not included in a certain contract is not a contract from the jurists' point of view, although it is also in the form of contract apparently. But it must be considered that even jurists who do not meet the initial terms of the pledge accept the uncertainty of an uncertain contract that qualifies for commitment and obligation (Khoyee, bita, 1993: 401).

Another argument that can be made about the legal nature of the initial condition is that, since in such a conditions there is a certain unilateral commitment , its form can be placed in a unilateral form. But it must be mentioned that in Islamic jurisprudence, unilaterals are unique to certain and specific cases, and unilaterals can not be considered as one of the general resources of bindings. From the aforementioned sayings, it can be concluded that for most jurisprudents, the initial conditions are of the nature of contract. The other word is the commitment that one party takes over the other, in fact it is in the form of contract and It is according to an agreement between the parties and it is clear that the aim of the contract, is an uncertain contract. Since such an agreement does not include any certain contract.

There is a controversy in Iranian law about the legal nature of one side promise for an agreement. Some lawyers believe that the unilateral promise of unilateral reliance on the will of one party is unilateral. (Shahidi, 2001: 201) Some other lawyers have implicitly accepted the same opinion. (Safayee, 2009: 21) In contrast to some other lawyers, the promise of contracting, although one of the parties to the contract, is itself a kind of contract, and its effects and

commitment are promise after the acceptance of the audience. (Katouziyan, 2009: 380)

The recent view appears to be based on a theory that is implicit in the French law of "implicit contract theory." By virtue of the theory of unilateral commitment to maintenance of the cause, it is argued that when it determines whether it has a reasonable period of time or a reasonable period of time to accede to its will to maintain the requirement in the above deadline, Also immediately refuses or accepts the claim. The parties have implicitly concluded a contract for the purpose of survival within the prescribed period.

Therefore, the underlying obligation is to maintain its claim within the prescribed period of this implied agreement. (Shahidi, 2001: 199; Katouziyan, 2009: 67) The second view does not seem to be correct. For the purpose of the term "unilateral" in the combination of one side promise for an agreement is that the soul of the will of a person constitutes a commitment and obligation for him, and the consent of the other party in the creation of it is not effective while the jurists' argument for contracting one side promise for an agreement is that the consent and willingness of the other party is a condition for making a commitment and commitment.

2-3- commitment to sale as preliminary agreement

Private contracts (Article 10 of the Criminal Code) are very diverse in practice, but among them, commitment to sale or promise of betrayal is an example that is common in the common practice of transactions.

The commitment to sale is commonly referred to as the "preliminary agreement" in the rules of transactions and legal relations and in the courts of justice. A contract is a preliminary contract or pre-contract, which is an introduction to the final contract. An amendment to this agreement is a requirement for and obligation to conclude a main contract, and the result is a commitment that results in a final contract.

Of course, under this contract, there is no objective right, but the interlocutors under this agreement are bound to conclude the original contract in the future. In fact, this preliminary agreement is specific. It is possible in a contractor that one party issues the terms of the final contract and its terms and sets the occurrence of the contract on the will of the other party, that is, a preliminary contract is closed and a final contract is considered that the final contract will be made by announcing the will of one side and there is no need to re-claim the draft. For example, renting a tractor on a condition that someone rents a tractor and pretends that after the tenancy period, the tenant can own it by paying a large amount of money. The second contract is a claim that has already been claimed and accepted by the tenant. In relation to bank loans, the bank actually lends money and the businessman can use this promise with conditions.

In relation to the legal nature of the preliminary agreement, it means the particular agreement of the interlocutors in the preliminary agreement of a contract. Because the subject of the transaction and the amount of money and the method of payment with a specific transfer and the obligation of the interlocutors to perform the final contract, it is made as a promise that it is applicable to Article 10 of the Civil Code. If one of the parties fails to fulfill the obligation, the other party can, through the court, require the other party to fulfill the obligation. According to this view, the preliminary agreement is a preliminary agreement that is the source of the commitment for the parties, and this commitment is binding as any other commitment. Typically, in this type of preliminary agreement, a portion of the transaction will be paid to the seller and the parties to the transaction are called buyer and seller and it is often seen that, in order to strengthen the performance of the contract or as a loss of failure to perform a commitment or delay in doing so, or as a condition of the contract for a specified period of time, there is also a subjective right depending on the will of the parties and the agreement reached. The judiciary has considered such preliminary agreements to be "commitment to sell." It must be noted, however, that the Supreme Court has accepted that if a preliminary agreement contains an obligation to transfer to specify conditions, it is a preliminary agreement in which both parties are bound to apply to those conditions. Especially in the case of immovable property or contracts that must be made in accordance with certain procedures. Therefore, they will accept a normal document to prove this commitment.

The General Assembly of the Supreme Court stated in the Verdict No. 3570 dated 26/2/42 on the preliminary agreement on the sale and purchase of motor vehicles: "A lawsuit is a

promise made by the prosecutor, after transferring the documents of ownership to half of the car, to be transmitted to one of the official dormitories and before the obligation was fulfilled, the car (as described in the documents in the case) was not executed due to an accident, therefore, what is stated in the appeal is that the documentary evidence filed is definite, and is not in accordance with the documentary lawsuit. (Bazgir, 2010: 187) Also, in paragraph 479 of the judgment of February 5, 1331, the Supreme Court stated: "Since the preliminary agreement is commitment to sale, a normal document will be accepted to prove the commitment"

At present, the overwhelming majority of the judiciary, the preliminary agreement, if it proves to be a commitment, is considered to be in the nature of a contract that is in the form of a promise and can be considered compatible with Article 10 of the Criminal Code. Society has also accepted this.

Anyway, as Professor Katouziyan has said: Detecting the legal nature of the document that the parties have agreed as an initial agreement depends on their joint intention. If they are asked to be signed by that document, the court must give the document. If, on the contrary, the aim is to require the conclusion of a contract rather than a transfer, the court must consider it a preliminary agreement. Of course, as the professor goes on to say: It must not be forgotten that the custom of Muslims in the conduct of intercourse is that if the buyer and seller, because of their legal requirement or their desire to do so, refer to the necessity of arranging the formal document, the emergence is that their intention is to commit Transmission, not the occurrence of Bai (Katouziyan, 2012: 52)

From the above discussion, the result is that, from the legal nature of the preliminary agreements, they are considered as a commitment to sale, and with Article 10 of the Criminal Code. Are applicable and therefore binding. Therefore, if a pre-contractual commitment is made to buy and sell, its execution can be claimed from the court. And, moreover, if the two parties are willing to provide the seller with a document if the transfer is to be made in a certain manner Normalize, However, as we said earlier, according to some people, there is a conflict with the provisions of the law and there is no legal influence, but according to some others, which is based on the author's commentary, Although it is in conflict with the provisions of the law on registration in the courts as a document of ownership, it is not in conflict with the proof of ownership in the court, as there is a large number of votes cast every day for the formalization of an official document on the basis of a normal document.

As stated above, an advance agreement is an agreement that the parties conclude to be required to conclude the original contract, Therefore, if the parties are referred to as the seller and the buyer in this document, this does not imply the purchase and sale (occurrence). Also, the seller will not be liable for the preliminary agreement. [38]

An initial agreement is an agreement whereby a party undertakes to perform a certain legal action in the future or to conclude a contract in the future, that contract may be levied or rented or married.

This subject in French law, with the adoption of Napoleon's Code of Conduct and Procedure, provides in Article 1589 of its Civil Code preliminary agreement: The value and the effect of the contract are valid if the parties agree to what us buying and its price. "(Gholi Nouri, 2010: 12) the mediation clause takes into account the outcome of the preliminary agreement and the bid, while the parties to the preliminary agreement do not comment on the current contract, but to prepare the parties for promiser and are required to conclude the contract in the future. Preliminary agreement is not a binding decision because it is for the purpose and purpose of the parties to transfer the ownership right to the buyer, but in the preliminary agreement it is intended to conclude the agreement in the future on the basis of the former agreement. Indeed, in the French Civil Code, there is agreement between the two sides of the value and the validity of the bill.

In Iranian law, Articles 22, 46 and 48 of the Registration Act are significant. In accordance with Article 22 of the Act: "When a property was registered in the Real Estate Office in accordance

[38] - Is it customary for people to ask if they have traded the house? The answer is, we made a preliminary agreement, we will come to the meeting later on, this implies that the parties do not consider the preliminary agreement to be a bargain, and the deal will be realized when it is made a document.

with the law, the state only the person whose property is registered or whose property was transferred to him, and the transfer is also registered in the property office, or the property is from the official owner Hereby has come to her, the owner will know". The concept of material implies that if the transfer to the real estate office is not recorded, the buyer is not the owner.

Article 46 of the same law stipulates:" Registration of documents is optional except in the following cases ..." In the matter of the arbiter, the lawmaker makes a decree. From the combination of the two above-mentioned articles, it is concluded that "registration is part of the essence of the contract and has a lasting aspect." [39] (Kashani, 1976: 32) Because if the unclaimed transaction does not transfer the ownership and the sale is not made without registration because the contract is subject to transfer of ownership of the seller to the buyer, it is not filed when the law of transfer is not made. The guarantee of non-registration is provided in article 48 of the law. . According to the definition we made in the preliminary agreement, in Iranian law, the preliminary agreement cannot have the value and credibility of the seller, so the right to set up that right does not apply to the traded property for the buyer.

In Iranian law civil law is silent about the necessity but according to the principle of sovereignty of will, there must be no right of recourse whenever a claim is explicitly or implicitly accompanied by an obligation to maintain it. In the termination of the contract, if it has been set aside for some time, in the sense that it is the intention of the seller to create an obligation and make a commitment, it is obligatory to observe it as long as the expired date is not fulfilled. If the expiration of the term and the acceptance of it are not fulfilled, the claim will be canceled.[40]

It is clear from the above that the mandatory requirement is unilateral. When the acceptance is made, the contract is concluded. If the due date expires, the effect of the claim will be eliminated, and the subsequent acceptance can not validate it, but the preliminary agreement is a two-way commitment and with an oversight And the termination is gone.

3- A sanction to the commitment to sale

What is certain is that nobody can forbid the cessation of that treaty by signing the dialogue about the terms of the contract Or solely for the reason why it has been discontinued for its continuation and conclusion of the treaty. However, one party may at the same time be guilty of misconduct, causing a loss on the other, In this case, the importer of losses will be guarantor under the general rules of civil liability and will be obliged to compensate for the losses. The sanction of commitment to sale in Iran and France is possible as considered below

3-1- The obligation to fulfill the same obligation

The section on the cessation of Iran's civil rights obligations has been adapted from French law (Shahidi, 2010: 1) but this illusion must not arise that the theory of enforced performance has not had the same commitment in a previous history. In French law, which has a lot to do with our civil rights obligations, whatever the title pledges, either as a principal commitment or as a subsidiary obligation, either in the form of a contract both in the form of a contract and in the form of an initial commitment , It is imperative that the word binding is "obligated" and all the obligations, whether to be verb or to leave the verb, in accordance with Article 1142 of the French Civil Code, if a promiser fails to do so, it leads to a claim for damages.(Safaei et al., 2010: 50)

The provisions of this article express that promisee can oblige a person who has a commitment to do something if he does not fulfill his obligations and can claim damages for failure to fulfill obligations. So, if there is no commitment to the verb, there is always the

[39] - Professor Katouziyan, in the 150th Lawyers' Association, about the nature of the preliminary agreement and its impacts, believe that : "If the two parties are willing to do the contract so by a normal document, this will be done due to dealing with property transfer laws, it does not have legal influence, so if a person sells the registered property with a normal document, not only it does not transfer the property with the signature, but also the ordinary document is not accepted to prove the transfer to court. "

[40] - Articles 565 and 1036 of the Civil Code can be surveyed and compared with the aforementioned issues.

possibility of obtaining compensation and damages for the promisee as a compensation.

In Iran's law, the promiser's obligation to execute the same obligation is a high degree of indemnity (Shams, 2001: 728) it is said in the justification that the two sides of the contract will reach their desirable and intended purpose in order to execute the contract properly. (Katouziyan, 2011: 4: 80) So fulfillment of obligations is the basis of the social system and as a result, the promiser's commitment to the commitment is the basis of this system and if the promiser cannot be obliged to fulfill his obligation, obligation and commitment in legal and social relationships will lose their meaning.

How can a person promiser do something, while not forcing him to do so and so the right in its legal sense must have a guarantee of execution, The law must provide the owner with the right to receive the right in the framework of the relevant regulations, Otherwise, the concept and meaning for the right in the community cannot be recognized (Shahidi, 2010: 25)

Also, the expediency of stability and stability of the contract is mentioned as another reason for the immediate termination of the breach of contract (Shahidi: 2010: 99) First and foremost in the Iranian law, It is the fulfillment of the same obligation, and first of all, it must be compelled to do the same, And thus, in contrast to this principle, other ways of compensation such as termination of the contract in Iran's law are considered secondary and excessive in its implementation of the psychologist (Katouziyan, 1997: 587) Therefore, in Iranian law, in several cases and in different laws, the implementation of the same obligation has been emphasized and In the event of a breach of contract, the promisee must inevitably come to the court and cannot have a normal executive action and the court for the proper performance of the contract in various ways or in the form of direct action, like Article 42 of the Civil Procedure Act, adopted in 1977, according to which, if the subject of the obligation is the delivery of the exact same, it is promissed by the procurator from the promiser and surrender.

Or indirect execution (financial and physical obligation) provides the basis for the obligation and obligation of the promiser to perform the obligation. (Shahidi, 2010, 25 and 26, p. 27) Among the legal provisions that emphasize the fulfillment of the same commitment as possible and can be referred to be:

1. Article 376 of the Civil Code provides for the coercion of the seller and the buyer. "In the event of a delay in the delivery, the absent-minded Ustman shall submit."

Or Article 362 of the Civil Code in paragraphs 3 and 4 of this article, including the works of the fairy, which is correctly stated. 3-contracts oblige the seller to submit a bid. 4- Obligates the purchase of the customer's purchase for the payment of a fee.

Article 278 of the Civil Code also states the desirability of fulfilling an obligation in a case which is the subject of an identical obligation: "If the subject of the obligation is the same, submission to the owner in the situation that he surrenders causes the promiser to be forfeited even though he has a deductible ..."

3. The necessity of fulfilling the same obligation in Article 619 of the Civil Code is also emphasized. "Maybe you cannot pay the money he has received."

4. Also, in the case of a commitment that is subject to the same delivery, in accordance with Article 42 of the Civil Code Act of 1997, the prosecutor shall be liable to the promiser for surrender and surrender. As long as there is the same subject of the contract, neither the creditor can claim the price or the price for it, Neither the debtor has the right to give it another place, Although there is a defect in it, It is only after the loss of the equal or unfeasible ability to accept the "exchange" and the equivalent of the obligation (which is usually the price) from the debtor (Article 46 of the Civil Procedure Act)

Therefore, in view of the abovementioned articles of law, as well as other laws in the Iranian law, fulfillment of the same obligation and compulsion to implement it is one of the legitimate affairs of the legal system of Iran and the first principle is the attempt to implement the contract, and other exceptions, which are stated in some of the rules of the law other than this, must be considered an exception.

Finally, in accordance with Iran's law on contract law, the following steps must be taken: First, in accordance with the principle of the necessity of contracts, the parties are obliged to fulfill their obligations (Articles 219, 220 of the Civil Code) Secondly: failure to fulfill obligations and failure to do so by reason of one of the

contractors does not cause the contract to be dissolved by itself, but continues to comply with the contractual obligations of the Iranian legislator. Thirdly, in light of the theory of coercion as much as possible in order to fulfill the same obligation, the promiser must initially be obliged to perform the obligation, But if the coercion is not possible, the fulfillment of the obligation, by the promisee, or a third party, must be made at the expense of the promiser.

Therefore, Articles 222, 237 and 238 of the Civil Code of Iran are hereby stipulated:

Article 237 of the Civil Code - "If the condition is in the contract condition of the verb, then the person who wishes to perform the bet must have it satisfied and, in case of violation of the party's deal, may refer the ruler to the demand for compulsion to be satisfied."

Article 238 of the Civil Code- "If the current condition is contractual and the obligation to perform it is not feasible, but it is possible to do it by someone else, the ruler can provide the requisite for doing that verb."

Article 222 of the Civil Code- "In the event of non-compliance with the obligation under the aforementioned article, the ruler may allow a person who has a commitment in his favor to perform the act and condemn the offender for the payment of his expenses."

Fourth: In the end, if the proclaimer is not possible and that the promiser is not possible and the action is not one of the acts that the other can do or its means are not provided by another, then the promisee will have the right to terminate the contract. Article 239 of the Civil Code provides in this regard "If the contingent compulsory force is not possible for the contingent verb and the conditional verb is not one of the acts that the other party can do on his part, the other party will have the right to terminate the transaction."

With regard to the abovementioned agreement, and finally the right to terminate the contract after the expiration of coercion, one can refer, for example, to Articles 534 and 476 of the Civil Code of Iran, which clearly states the steps referred to Article 534 of the Civil Code- "Whenever the agent abandons it at the time or at the beginning of the operation, it is not the case that the action is being carried out in its place, the ruler is obliged to demand the fields of the agent or perform the operation on the expense of the agent and, if it is impossible, the farms have the right to terminate the right."

Article 476 of the Civil Code- "The landlord must submit the same tenancy to the tenant and, if the landlord refuses, is compelled to cancel the cessation of the tenant."

Here it must be recalled that according to the discussed issues, it must be acknowledged, The right of cancellation provided for in the above mentioned case is one of the means of compensation actually due to the enforcement of contracts, not within its limits. In other words, in the event of a breach of contract, the promiser must initially be obliged to comply with his obligations, if he has to do so, which can be invoked in the right of withdrawal.

In French law, as an example of written rights, the implementation of the same obligation is of primary interest and therefore the contract to be concluded must be executed, , It seems that the reason for this seems to be that in the country's right under Article 1134 of the civil law of the contract, it is introduced as a law of the parties and is of great importance.. This article stipulates "Legally constituted contracts replace the law with those who have signed them. These contracts cannot be terminated, except in a manner or in ways that the law permits ..." (Nouri, 2011: 19)

However, if the promiseer does not fulfill the contractual obligations, the promisee is in favor of requesting the execution of the contract or its termination and compensation. Of course, the termination of the contract must be through the court. Article 1184 of the French Civil Code provides: "The Conditional Condition is always implicitly stipulated in the Contractual Rules for a case in which one of the parties does not fulfill its obligation. In this case, the contract will not be canceled. The party to whom the obligation is not fulfilled in his favor, the party shall, if possible, be required to fulfill an obligation or request a cancellation of the obligation and compensation. Termination must be through the court and may be terminated according to the circumstances." (Nouri, 2011, P. 34)

The remarkable point of this article is that in this article reference is made to the condition of rejection and the reciprocity clause is Article 1183 of the French Civil Code "The reciprocation clause is a condition that, whenever it occurs, it cancels the commitment

and returns the matter to the point that the commitment has never been created..." (Nouri, 2011, P. 33) Therefore, according to the definition given in this article, if the fulfillment of the condition of rejection and receipt of suspended or conditional protest (which according to Article 1184 of the French Civil Code is a failure to fulfill an obligation by one of the parties to the contract), the contract must be dissolved Knew, However, the article did not disclose the contract itself and it was terminated and it was terminated due to the promisee's request from the court and the issuance of a judicial decision on this matter. This situation seems to be contradictory because, on the one hand, the termination and termination of the contract is achieved by obtaining suspended and conditional warrants, namely, "refusal of the contractor to execute it", On the other hand, the fate of the contract is in the form of the dissolution of the remainder of the contract on the other party, and he may require the abstainer to execute the contract or request the termination of the contract from the court.

The reason for this conflict and conflict is only the result of the confluence of the issue of proof and proof of this case in the French law. In fact, in fact, the liquidation of a contract by the refusal of the contracting party to execute it must in fact be regarded as a researcher (confirmation stage) However, in terms of the factual aspect of this dissolution, its judicial fulfillment is in the jurisdiction of the judicial authority (that is, proof of the dissolution of the contract by a judicial decision) While the judiciary's verdict is just announced, it does not. (Shahidi, 2010: A.H.S 101) Accordingly, the basis for the termination of the contract under Article 1184 of the French Civil Code is an implied condition that the legislator has considered it to be in a position of trust.

Article 1590 of the French Civil Code applies, That is, when it comes to offering a gift, each interlocutor can overwhelm it. If the customer overwhelms the customer, he/she loses his Deposit and, if salesperson discharges it, returns twice as much to the customer. . This has been adapted from the Roman law of the Justinian period (Emami, 1998, 1: 456).

But contrary to previous lawyers, some of them, following the previous view, disagreed and expressed their views on the rights of foreign countries: In French law, in accordance with Article 1590 of the civil law of that country, the sign is an indication of the existence of the right to terminate it for the grantor or both parties to the contract, Or, in other words, it is suspended with adjournment with the condition of the rejection. Vice versa, In German and Swiss law, giving the sign is an indication of the firmness of the deal, which seems to be more consistent with the foundations of our rights (Katouziyan, 2009, 1: 63).

Egyptian civil law has also made a deal for terminating a dispute, in order to end the controversy, So the lawyers of this country point to this: An affordable contract is an indeterminate step in the final deal, so it is permissible to deny it. According to Article 103 of the new Egyptian Civil Code, he expresses them: Whenever a contract is executed in writing, the parties will not expressly or implicitly disclose their intention to pay an indemnity for the transaction, Indemnity is due to the fact that the parties are demanding the right to waive the contract for each other, Whether in a contract, a lease, or any other contract, and if they do not abide by the right to use it for the time being, the contract is finalized and it is necessary that the agreed balance of the agreed amount be paid to the [paid] amount, in order to complete the contract, However, if one of the two parties fails to fulfill the contract during the said period, it is necessary to pay an amount equal to the advance payment as a fine for the other (Alsanahouri, 2003, 1: 143).

Article 1142 of the French Civil Code stipulates- "Any commitment to doing or not doing anything, if not fulfilled by the promiser, is indemnified." (Nouri, 2011: 22) To convert a commitment to compensation, it must not be restricted to the use of the material, But this article must be in accordance with two Articles 1143 and 1144 of the Civil Code, It is only known that execution of the obligation is not possible except by promiser action. Therefore Article 1143 of the Act provides "Nevertheless, the promisee has the right to decide what to do with the breach of the obligation, and may also eliminate it at the expense of the promiser…" Therefore, if the obligation is either to leave the action and to do it or to leave the action not subject to the promiser's conduct, one can make a commitment with another at the expense of the promiser. But if implementation of the commitment requires promiser personal activity, it is not possible to implement it contrary to the promiser's will. This will result in the denial of

promiser freedom that is not legally permissible. (Shahidi, 2010: 106)

Therefore, in French law, in spite of the status of the contract (which is considered to be the law of the parties) and the necessity of its implementation, if the obligations of the contractor are not fulfilled by the promiser, promise according to Article 1184 of the Civil Code may refer the court to his obligation to perform the obligation or to terminate the contract by the court and demand damages. Therefore, applying for the same obligation or requesting its termination and compensation are not in the same direction, not during the course of one another and not one of the priorities of the bonding process. The promise has the right to choose between the two methods above. (Darab Pour, 2000: 203) By comparing the method adopted in French law with Islamic law regarding the guarantee of failure to fulfill obligations, the French civil law is almost identical to that of Imamieh's unpopular and minority jurisprudents. Except that this group of jurists who are compelled to perform the same commitment or termination do not at all terminate the discussion of compensation in the permit (Darab Pour, 2000, P. 197)

-2-3compensation

The problem of damages is one of the most important form of application in franc rights in spite of possibility of extend using the comment of performing contractual commitment.

In some of cases; the comment s of performing commitment is meaningless, but in other damaged cases, it missed the reliability about the execution quality that other part reported.

Civil low reported that it is necessary that damaged (people) must give an assertion about performing to the partner who terminated the contract before compensating the damages(law civil, article 1146). This condition is limited to the fight of delay damages by courts and juristic and it is ignored in some cases which performance is impossible and when other party has refused the execution performance. [41]

In the current situation a typical letter is enough although at the first times a precisionist (modified) assignment was necessary. (articles 1146-1139 in civil law).

The start point of French law for detecting damages in contracts and non contracts was that damaged person can receive the whole of compensation of it's damages. [42]

And about contract, this problem must be supported through article 1149 civil law, and based on that these damages are compensated and benefits are allowed which not received after terminating contracts.

So, we didn't study precisionist lectures about " the topics of damages" which are compensable by the reason of terminating contracts by performing discords in French texts. Overall moral damages (such as mental anxiety, missed certificate and so on) are compensable.[43]

There are limited regulations about the number of damages for a juristic and this topic is explained through some factors which are in the lower level about the best assessment qualification.[44]

There isn't any differences between compensation of damages of benefits and supposed for damaged person for French juristic specially.[45]

There are two others important issues, at first, civil law detected two survey about lack of availability of damages in contract damages. Generally person is responsible only for damages that predicted in the time of contract or it can be predicted. But in some cases the partner is responsible for all of damages that are terminated directly and in these cases, partner is suspicious to cheat in some cases. (grudge specially lack of intentional performance). (article 1151-1159 civil law) and the court interfered about suitable performance of these regulations for creating reliability.

3-3 the situation of conflict transactions

Some researchers have some ideas about infringement of performing and play the commitment about commitment contract to the certain sale. If promiser refused for doing the commitment about transform transacted properties to the promiser and the property

[41] Nicholas, French contract, 932-4
[42] Benabent, obligation 343 Terictal , obligation 934-04
[43] Malaurie And Aynes Obligations 283-3
[44] Terretal, Obligation, 044 starcketal, Respinsabilitie delict. Uelle 746 ff
[45] Nicholas, French contract, 622-7

transformed to other person, second transaction became correct. Because second transaction is explained from owner and in the time of his owning. So there isn't any foundation for terminating that and when damages are occurred, he can ask that according to the civil law responsibilities. But Dr. Katouziyan doesn't have this opinion in other books (Katouziyan, 2001). But it is clear that there are some fans about this theory in Imamiyeh jurisprudence and external rights and judicial process.

Imam Khomeini explained the condition that occurred by performing certain from conditional property by one of contracts in Albaye book and said that (the reason of necessity to the condition is refer to the condition and it is not rational that this issue compared to other issue such as sale or devotion. Lack of doing violation is forced for every person and it can't be cone in special situation.) so if the person who is conditioned refused to doing the condition, he did an illegal job and he must pay some money instead of his commitment according to Imam Khaomeyni's opinion. The owner of menhaj og Faghahed (Khouyee , 1999, th volume 367) say that second contract is correct and only person who ordered the condition can receive this pay. Other jurisprudents have the same idea in their books. (Najafi, 1989, 22th volume, 356). There are prominent authors believe to the compensate of damages in French and they didn't justify second transaction.

Basically, French law didn't allow to one part of bilateral contract to terminate contracts by the reason of failure to perform from other side. (even though the matter was very serious). But it is necessary to ask this permission (terminating) from court. (article 1184 civil law). Failure to performance from against person and enough severity in real terminate of contract (judicial termination) must be asked when these kinds of appeals reached to the court and the recent issue is lower than in " the best qualification of assessment.".

French courts have high qualification in report or lack of report the termination, when this issue was used. [46]

This issue shows the more prefer about performing contract. So if the partner who didn't perform the contract, suggested to perform it, the court didn't terminate contracts and they give him another opportunity(clause 3, article 1184, civil law) although the effect of terminating contract is from the first part, in some cases that court accepted the termination courts reported that contract is only terminate till a special measurement. This issue leads to reduce paid costs by damaged person for incomplete performing from other part and this is in approach that the basic sample of that is business sale of good but it gave in the out of this field. [47]

It is necessary that to pay attention that when courts announce that the court must ask lack of performance contract(clause 2, article 1184, civil law) and every condition of responsible must be performed.

Conclusion

The current research surveyed the commitment to sale and its sanctions in Iranian and French law. The results of the research on the legal nature of the commitment to Iran's law in France indicated that the commitment to sale in Iran's law is in the form of uncertain contracts and can be expressed in the form of Article 10 of the Civil Code and as a preliminary agreement. In French law, as a contract, there are legal impacts. Also, according to the sanctions of commitment to sale, the results of the investigation will indicate that both Iranian law and French law, need the sanctions of the same commitment and compensation as the most vital sanctions of commitment to sale and the status of conflict of transaction in cases of commitment to sale and the existence of a preliminary agreement is that the second transaction is correct, and the promiser is merely need to pay compensation to promisee for the commitment to sale. If we accept the credibility of a one-side promise for an agreement in Iran's law, it must be mentioned that the principle of the contract will not be fulfilled by fulfilling the unilateral promise. Such a conclusion is crystal clear. Since just one side is the promiser for the main contract and also writing the main contract is depend on declaration of consent and intention of the other party, at another time (Shahidi, 2001; Safaiyee 2003: 21) Concerning the two side promise of concluding a contract, it must be considered that the principle of the contract is not essentially concluded by concluding a preliminary contract (Katouziyan, 2009: 383).

[46] Lorvoument, contract. 83744

[47] Larroument, contract, 937-04

Such a conclusion is easily applicable to what is mentioned about the legal nature of the promise of concluding a contract in Iranian law. Similarly, there is a similar point of view on Imamiyeh jurisprudence. As an instance, the author of Majmae Al-Masael, for answering this question, what is the held about the issue if the property has been pre-agreed and pardoned? It has been agreed that "In the assumption of the unequivocal question of preliminary agreement, if the religious transaction is not established, it does not have any impact, and it is vital in the controversy of the affirmation of the law." (Golpayegani, 1985: 24)

preliminary agreement .If we accept that they are not merely giving a promise one can say that according to this jurist preliminary agreement is one of the types of bilateral promise and does not lead to the results of the main contract

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