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## COMPARATIVE ANALYSIS OF LOSS DUE TO BREACH OF CONTRACTION IN IRANIAN AND FRENCH CIVIL LAW

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### ABSTRACT

Contraction is a tool for regulating legal affairs between human in society. In law of some countries such as Iran and France, parties are considered contraction obligation violator when after the expiration date of contract the creditor demand for performance based on the provisions of the contraction and indebted party didn't act to his obligations. Loss due to contraction breach is an issue to which law is sensitive and claims compensable loss is a type of loss its happening is inevitable. This interpretation is rational and evident and there is no need for theoretical reasoning to authenticate it. Iranian legislator provided some regulation for reclaiming the right in favor and on behalf of plaintiff party to some extent similar with French law. Although, there are some differences between these 2 systems regarding the mentioned issue, they are limited to trivial areas.

**Keywords: Civil law, contraction, breach of contraction, loss, compensation**

### INTRODUCTION

Trading is one of the most important and commonest forms of international relationship between nations in which political, cultural and social exchanges also happen. So, it is not unreasonable that global community began the first efforts in order to integrate and unify the law from this area. Contraction as the first tool for regulating legal affairs between parties in

society and loyalty to promise is one of the general legal principles for all nations. Breaching the pact in is blameworthy in all human and divine schools and laws. Human being during his life always was and is thinking about this issue so that there would not be any damage to this principle and contraction breach would not happen. Contraction breaching time recognition is

one of the issues to which there're many different rules specified in different law systems. In law of some countries the parties are considered contraction obligation violator when in addition to expiration of contraction date, creditor demands the action based on provisions and indebted party didn't act to his obligations. In some other, this is necessary and sufficient to recognize the contraction breaching when the date is expired. Anticipatory breach of contract theory states when before the expiration of contraction date is reached, engaged party behave as he is unable or lack of readiness or unwilling to act based on obligation of contraction, if this lack of readiness or unwillingness is to serious extent or closed to reality that every reasonable individual believe that contraction breaching would happen, therefore Promisee in addition to warning the promisor and receiving suitable pledge for performing based on contraction obligation in appointed time, suspend his contraction implementation to guarantee time determination. Anticipation of breach of contract may be concluded from word or declaration of promisor or may be achieved from behavior or the way preparations are provided by promisor. The main element of this theory is promisor's inability, unwillingness or lack of readiness to perform the obligations. This issue is true in

cases the promisor rejects the contraction or refuse to perform based on contract. In this theory, breach is probable, but this probability is out of extent of guess, since naturally every reasonable individual believe in the fact that under this condition breach will happen, surely. Therefore in cases in which one party's behavior or words makes other one, reasonable and logical, concluding that the contract won't be completed and there would be breach of contract by promisor, the anticipatory breach of contract theory is addressed which allows promisee first suspend his contraction until receiving suitable pledge for performing the obligations and in case of not receiving the mentioned pledge, he can terminate the contract. Recourse to contract enforcements is proposed when the date is expired and promisor didn't perform to his obligations. But there may be concluded based on the declaration, words or informed letters by promisor or his actions by promisee treasonably that the promisor would not be able to complete the contract in appointed date. In this research the loss due to breach of contract in both French and Iranian law systems are compared based on civil law.

#### **Certainty of loss**

Compensable loss is considered a type of loss whose happening is evident. This interpretation is reasonable and its

authentication doesn't need any theoretical reasoning. It is obvious that what is not certain or determined and doesn't exist from human perspective cannot cause liability, related to human will or legislated. In Iranian law article 728 former civil procedure codes its necessity and interpretation is implied: "If the court issues the verdict of loss that loss claimant prove he is harmed..." there is not stipulated in recent civil procedure code approved in 1379, but there is not possibility to object to legislator because evident issue doesn't need proof and stipulation.

#### **Components of certain loss**

In French law in article 1149 of civil law these 2 types are stipulated. But in Iranian law there is a different situation and there are different ideas on whether the non-profit is also considered as certain and compensable loss. In civil procedure code in accordance with article 728 the non-profit also is taken into account as certain loss and article 6 of civil liability code also validates this issue and therefore terminated the disputes rooted in Imamiyeh jurisprudence in ideas. But in recent civil procedure code approved in 1379, legislator explicitly considers the loss due to non-profit as non-claimable based on article 267 and paragraph 2 of article 515, whereas in paragraph 2 of article 9 in criminal procedure code (approved in 1378) non-

profit is claimable and article 6 of civil liability code is also kept.

#### **Legitimacy of loss**

The mean by legitimacy is that loss is not the natural effect or result and general consequence of right advocacy by affecter, therefore acts such as legitimate defense, applying lien, and applying authority of termination and like them the loss can be the natural and general result of them are not deemed responsibility and liability, because the loss resulted from which is not illegitimate. In Iranian law it is concluded in some cases such as article 1 of civil liability code the mentioned explanation and lack of agreement on right granting and forging liability and liability due to conventional actions would confirm this explanation and its necessity. In French law also the concept of delinquency, as one of the bases of civil liability caused the fact that authors consider it sufficient for explaining the necessity of illegitimacy of loss and it is not need by legislator to stipulate.

#### **Immediacy of loss**

The mean by immediate loss is that the result of the action immediately and directly lead to loss and in contrast, there is indirect loss, i.e. loss between which and losing action there are one or more mediators and the action's effect would be manifested via different mediators. In French law article 1151 of civil law it is stipulated that in

contractual liability loss should be direct and immediate; i.e. the results would be considered the direct and immediate result of breach of contract. French lawyers believe that the conditions of this legislation is the necessity of detecting causality relationship between contractual obligation breach and the loss imposed on promisee in such that the causality relationship between breach of contract and the loss imposed on promisee refuses the causality common relationship in between and leads to lack of one of the rational and evident pillars of contract civil liability and in fact the event of loss is not related to the promisor's action. In Iranian law article 520 of civil procedure code approved in 1379, loss immediacy is defined as:

"About claiming of the loss imposed, plaintiff must prove the issue that the direct and immediate loss was due to lack of performing the contract obligation or delay or lack of submission of claimed; otherwise the court will reject the claim of loss."

### **Loss predictability**

In French law explicitly in article 1150 of civil code in contract liabilities, only the predictable loss is claimable.

#### **A. The issue of predictability**

Today, in French judicial procedure this is accepted the quantity of loss and its extension are important parts of predictability issue and this is not

limited to the cause of loss and even to some opinions, the cause of loss is not considered as the loss predictability. Majority of authors in France also believe in this fact.

#### **B. Time of loss predictability**

Apparently, all of French lawyers agree on this issue that the criterion of contract loss predictability should be *in abstracto* not *in concreto*. In other word it should be investigates whether the loss imposed was predictable based on the rational and reasonable promisor's opinion. Terms applied in article 1150 of civil code confirm this issue.

Paragraph2. Particular interpretations of compensable loss

First, the loss should be financial, not physical

As stipulated in article 5 of international good sales convention, physical loss and its compensation are not included in convention's regulations and it includes only financial loss.

Second, loss should be material not spiritual This is not stipulated in this convention but it can be deducted as the issue in line with the subject of article 5 based on criterion of article 4 of convention (only rights and obligations of sale contract included in convention). Principally, investigation of spiritual loss due to damage due to individual's prestige, personality or general

spirituality is one of the features of international transaction features (paragraph 1, article 7). Thus investigation of claims related to Spiritual loss obeys the national law which is determined based on rules of private international disputes resolution.

Third: loss should be imposed on properties of promisee of international sale contract not third party

Concluding from articles 4 and 74 of the convention, the loss imposed on third party's properties due to breach of international sale contractual obligations are not included in convention and should be investigated based on the party's national law. The features of international trading require that third party is not in relation with international sale contract included in convention and is excluded from the conventions and investigation of his claims should be in accordance with his national law.

### **Loss of delay in cash payment**

In Iranian law before the new civil procedure code was approved, based on opinion of Guardian council, the loss due to delay in cash payment is considered as lucre and claiming on which is illegitimate. Apparently, by this reasoning and contraction of sale, the cash payment treated as debt on customer for seller and customer is borrower and seller is borrowed. Therefore, claiming any type of loss of cash payment is included in legitimate lucre and

is forbidden and obtained money or property is not usable and to make use of it is responsibility and rejected and refused. But banks are allowed to receive the delay of cash payment based on the regulations and banking documents provisions. The cause for this exception is not evident and to some opinions it can be due to the relationship between bank and load taker based on the receiving the loss of delay in payment. Therefore, articles 228 of civil law and 719 and 723 of civil procedure code are illegitimate and inapplicable and article 34 of registration law and notes 4 and 5 and articles 36 and 37 of registration bylaw are considered invalid. The conditions of claiming on loss of delay in payment in Iranian law, is as follow in accordance with article 522 of civil procedure code:

1. The subject of claim should be debt and in term of common currency.
2. Borrowed claim on the debt.
3. Indebted possess the financial ability to pay the debt and refuses to do so.
4. The annual price index from due time to the time of payment is elongated to large extent and in this situation the criterion is central bank's declaration.
5. Creditor should claim on the loss of delay in payment.
6. The court should calculate the amount of mentioned loss based on

the criterion mentioned and issue the verdict on payment of loss unless parties resolve their dispute. In French law, legislated in paragraph 1 of article 1153, claiming on loss of delay in payment is recognized officially and this is nothing but to attempt for compensate the loss of payment. The features of loss of cash payment delay in French law are as follow:

1. The loss is assumed and creditor is exempted from proof of loss imposed.
2. The amount of loss also is calculated based on the certain legal rates and indebted is exempted from proof.
3. For court, the determined rates are binding and judge cannot determine the amount based on other criteria and norms (E.G. inflation rate, construction costs, Etc.) or determine it as an amount higher than the legal rates.
4. Parties compromise in credible against these rates and they can determine the rate of loss contractually before or after the amount of loss of payment delay is determined or reduce or increase it.
5. In situation parties don't compromise against the legal rates determined, creditor can only claim

on the loss of payment delay based on the rates determined legally and he is not entitled to claim on more amount, since these rates in fact are some legal governance of a certain amount of loss in a time interval unless based in paragraph 4 of article 1153 civil law, promisee prove first that indebted delayed in payment with bad intention; second, there is no relation between loss imposed and delay (it is not resulted from delay) but there is another factor such as creditor being forced to borrow with interest involved. And third, the loss proves the claimed event.

#### **Loss of loss (compound interest)**

By loss of loss we mean the loss of payment delay from debt which is the origin of that payment delay is received whether as payment obligation or as loss with certain rate. In Iranian law in civil procedure code based on stipulation of article 713, compound interest is forbidden. But in recent civil procedure code it is not noted. There are 2 probabilities assumed:

1. The term "debt" in article 522 of recent civil procedure code encompasses the debt whose origin is main payment delay, so loss of loss under certain conditions

mentioned in this article are claimable.

2. Apparently, the mentioned article particularly the statement "from due time to the time of payment" shows that "debt" is only considered as cash payment obligations of the contract and debts due to enforcement liability or loss of loss are not included in.

In French law, the legislator in article 1154 civil law considers allowable the receiving the compound interest:

1. In accordance with contract, parties agreed on or ask from judge through a petition demanding the recoverability of interest of loss.
2. Interest of a period lower a complete year cannot be added to capital.

The reason for this limitation is its danger for indebted.

### **Loss assessment procedure**

There are different procedures for loss assessment and among them, in addition to general methods (judicial), there are particular methods in order to facilitate the process (legal methods) or in order to prevent from challenges related to loss proof and its amount assessment and even in order to establishment of a forceful tool for requiring the promisor to perform his obligations (contractual methods), notable. On the other hand, the common rule in each

of local and international trading transactions which form based on the public perception and scholars' logic and are based on traders' demand to different scientific areas also can determine some other particular procedures for loss assessment.

### **Judicial procedure of loss assessment**

The meaning of judicial procedure of loss assessment is that court can apply particularly the experts' idea in every technique and profession in assessment of quantity of imposed loss to plaintiff. In Iranian law in accordance with article 515 of civil procedure code and article 3 of civil liability code, it is the duty of court to assess and determine the amount of loss provided that:

1. Amount of expenditure and loss is not determined in law or official tariff (A. 518)
2. There is not a certain contract between parties related to determination of loss (A. 515)
3. The lawsuit is not completed by compromise, in this situation there would not be any verdict on the issue; unless in addition to compromise, they make a certain decision related to the imposed loss (A. 5)

In French law in most of the cases, this is the judge is responsible for loss assessment and in this situation he should have in mind

the principle of complete compensation (As. 1182 and 1149 of French civil law). This is ideal that the situation return to the past state for affected and there would be balance again. In detection of amount of loss the intensity of delinquency by defendant should not be taken into account and judge cannot issue the verdict of loss compensation in amount more than claimed plaintiff's amount. In cases the plaintiff fails to prove the amount of loss, judge can reject the lawsuit or send it to experts, if required.

### **Particular procedure for loss assessment**

#### **1. Contractual procedures (penalty conditions)**

By particular procedures for loss assessment we mean that there is secondary agreement between parties in addition to the main contract or in an independent contract and based on the main one related to realization, quality and quantity of loss due to breach of obligations by obligator. This contract which is called criminal penalty includes:

1. Assumption of the loss due to breach of contract
2. Determination of imposed loss as monetary equivalence

The effect of this secondary contract's provisions is depending on breach of obligations of main contract by promisor and due to it:

1. Promisee is exempted from proof of loss imposed on him and as a result

proof of breach of contract, because the loss is assumed certain.

2. The party is exempted from assessment of loss amount, too; because this case is determined previously based on parties' certain compromise.

Such terms and clauses in significant cases eliminated the need for parties' presence in court and in some situation their presence in court can be effective in facilitation and acceleration of investigation process, because it is notable that the amount is determined as an equivalence amount of money based on the currency in each country in these causes in term of obligatory clause that are imposed on promisor related to his obligations. It is called obligation of payment and can be a suitable binding tool for guaranteeing contractual obligation performing. In Iranian law this particular procedure for loss assessment is derived from article 230 of civil law and new civil procedure code, article 515 and accepted and even it is obligatory to be applied in some cases:

When the claim is not resolved compromisorly, in accordance with new civil procedure code, article 517, there would not be any issued verdict on the loss; unless while compromisor, there would be a certain decision made on the loss imposed. Undoubtedly, these regulations monitor the

correctness and even the procedure's being compulsory in some situations considering the positive influence of such clauses. The conditions for correctness of clauses are determined based on contracts' general regulations (As. 184-225 civil law). In French law also the legislator accepted these conditions based on articles 1112, 123-226 of civil law, and determined its limitations and conditions using judicial procedure in detailed. They are not considered in this research.

### **Legal procedures for loss assessment**

Occasionally, legislator legislates rules and regulation containing absolute governance or relative ones implying the event and amount of loss to accelerate and facilitate the loss realization and assessment due to breach of contract. The legal procedures for loss assessment can be divided into 2 classifications:

1. Determination of loss rate of cash payment delay
2. Some particular procedures existing in some conventions and some countries following common law.

About the principle of loss of cash payment delay, in Iranian law in article 719 of previous civil procedure code, the amount was determined 12% annually which was a maximum amount and it was allowable to agree on an amount lower than this. The loss was assumed as the amount calculated

based on mentioned rate and didn't need to be proved, but as it was discussed before, in recent Iranian law there not any rate and loss calculation criterion is the egregious variation of goods price index and principally there were substantial changes in assessment of loss of cash payment delay. In French law the fixed legal rates are determined for a certain period of time as percentage which is discussed elsewhere. In calculation of loss in case of substitute transaction in none of Iranian law there is not stipulation of this issue, but it seems that this procedure of assessment can be accepted based on causality relationship and from enforcement liability. There are 2 pillars in causality:

1. Existence of mediator between harming action and loss.
2. Delinquency which is the condition for detection of indirect and mediated causality relationship (As. 331 and 335 of civil law).

In discussed assumption, promisor first acts delinquently such that leads to substantial breach of contraction and permission of contraction termination by promisee. Second, there is mediator between harming action (breach of obligation) and loss (difference of prices). Therefore, pillars of causality are provided and the promisor who breaches the main contract is liable for mentioned losses and some of French

lawyers accepted the rule based on this. In French law some of authors explained that this procedure is accepted in local French law, too.

### **Common procedures for loss assessment**

In Iranian law, derived from article 220 and 225 of civil law, the common procedures for loss assessment due to breach of contract explained in local trade, can be considered as a contractual and implicit procedure for loss assessment in case there is lack of agreement and in accordance with article 515 new civil procedure code it is prior to judicial procedure. But in French law, the common situation is a second order source of informal and secondary sources and can play the role of parties' joint will interpreter. So, as Iranian law, one can see the credit of common procedures for loss assessment and return to contractual procedures in France.

### **Time and place of loss assessment**

#### **1. Time of loss assessment**

First, the purpose of civil liability is to return the situation of affected to its initial state and the rule of compensation is applied to possible extent. Second, it may happen that the imposed loss would be increasing due to its nature and features and origin. Third, inflation and the reduction of affording power of money make calculation of loss with previous indexes an invalid and insufficient tool for compensation. Therefore the issue of time of loss

assessment as a monetary equivalence becomes a considerable issue. In Iranian law some believe that time of loss assessment is the time of performing the obligation of contraction. For example, if the cash payment in currency is breached, the loss is calculated based on the rate of currency at that time (due time) or if based on a contraction, seller obliged to deliver goods on a certain time and didn't do so, the price of the goods is calculated based on the price of that time. Article 226 of civil law is about this issue. On the other hand, there is a third group considers the time of obligation claimed as criterion of calculation. Finally, some stated that in contractual liability, date of loss assessment is the date of verdict issuance, since:

First, before issuance of verdict, indebted requires to compensate the loss. The court verdict faces up an external dimension to this legal requirement and changes it to an amount of money; therefore, it is logical that at the time of verdict issuance the expenditure of promisor's obligation is determined.

Second, only it is in this situation that the loss due to lack of performing the obligations is compensated completely; because proceedings sometimes elongated to some years, the money affording power would reduce and prices increase.

It seems that the this view is more powerful, since the purpose of civil liability which is complete compensation and restoration of situation to previous state for effected is provided using this solution and the content of civil procedure code, article 522 confirms this issue. In French law, also the time of loss assessment due to lack of performing obligation is the date of issuance of verdict. The base of this criterion is to completely compensate the loss and the judicial procedure is according this principle. There are 3 exceptions in judicial procedure:

1. If customer purchased alternative goods, the date the goods were purchased is the base of loss calculation.
2. If third party compensated the loss of affected, the date of compensation is the criterion of calculation of loss (to pay what third party paid on the behalf of promisor)
3. If the broken down goods are fixed by the affected or third party, date of fixing is base of loss assessment.

All of these exceptions are justified by 2 principles of complete compensation of loss and not going beyond the real loss amount. In local law, the place of loss assessment is not of high importance; unless about determination of price or an amount benefit's equivalent expenditure of some properties which change in term of place

difference and place of event. However, here judge should take into account the principle of compensation of loss and considering the situation and governing conditions and type of usage by promisee and mentioned in contract or have typical dimension and then determine the place of loss assessment. Places where the court can consider include:

1. Place of contraction
2. Place of performing the obligations
3. Place of lawsuit adduction (defendant's dorm, place of contraction, place of contraction implementation, place of immovable property

The content of new civil procedure code, article 515 confirms the complete authority of judge, extensively.

### **Compensation manners**

#### **1. Monetary manners for compensation**

The purpose of these manners of compensation is the manner in which the equivalent money of loss is calculated and the party imposed the loss is sentenced to pay the money to affected party or is deprived of receiving an amount determined for him. This manner is the commonest way of compensation in enforcement civil and contractual liability, since:

1. Performing this manner is easier for court and parties in other ways

2. It is done more quickly than other procedures
3. Sentenced party's requirement is easier to it
4. Claim parties will know what are their inter-liabilities obviously and this issue is done in a better manner when monetary equivalence is determined

In Iranian law, this manner is the commonest procedure of compensation. But this procedure is not compulsory and in addition to parties' compromise against it, judge also has to be authorized in selecting the loss compensation manner because:

In present laws, there is no requirement for manner of payment of monetary equivalence, but considering different articles about enforcement liabilities in civil law such as articles 311-333 and using its criterion it is concluded that the purpose is to compensate completely and in this regard it is of priority to compensate the same property relative to paying money as compensation. On the other hand based on civil liability code, article 3 there are extended authorities considered for judge to select the manner of compensation and it is true in contractual liability by abolishing its features considering the enforcement liability fundamental unity. Of course, necessity of referring in other manners of compensation in contractual liability is

achieved less than other issues and therefore in majority of cases the manner is payment of monetary equivalence and other manners and procedures are not observed in verdicts issued by courts. In French law, there're disputes related to the issue whether judge is authorized to select the manners of compensation as financial and non-financial procedures and there are 3 procedures proposed in doctoring:

1. In case there is lack of parties' agreement on manner of compensation, it is judge's authority and responsibility to make decisions; therefore, he can select freely the procedure and this is out of authorities of court of justices (because it is a factual issue). Advocates of this procedure believe that first, non-financial manners also can compensate the loss, completely. Second, judge's authority is a desirable issue because he can measure the advantages and disadvantages of the manners and elect the suitable one based on economic and social considerations (social engineering). For example, when there is a building constructed illegally, judge can select one of the verdicts of destroying the building based on its economic outcomes and keeping the building and issuance of

verdict on payment of an amount of money as a loss equivalence.

2. Considerable number of lawyers believes that the best manner of compensation is to restore the situation to its initial state and compensate the property with the same one which can compensate the loss by ruining its roots, completely. Therefore, this procedure, as much as possible, is preferred over other procedures and affected can ask it from court or even become requiring based on defendant's request and judge in this regard is not authorized except parties compromise.
3. Third class of lawyers believe that among non-financial manners of compensation, there should be differentiation of procedures lead to complete compensation of loss and the manners in which the initial situation is recovered by eliminating the source of loss.

The first class of manners are not preferred over financial ones and this is the judge who should select the most suitable procedure considering the situation and condition and this selection is out of authorities of court of justices. But the second class of procedures such as performing the same obligation of contract or issue the verdict on destroying completely the origin of loss are preferred

over other procedures even financial ones because it recovers the initial state and judge is not authorized to select, since he at first should recover the initial state as much as possible, not only rely on the compensation and of course this is in effect until the parties or one of them is willing. Because recovering the initial situation or state and elimination of loss source completely can be requested by affected or requesting party. In French law, Court of Justice accepted the authority and freedom for judge to select the manner of compensation such as financial or non-financial until this is not inconsistent with issue of loss compensation. But France State Council believes that judge principally is responsible to apply financial compensating procedure and applying other procedures is possible in exceptional situations.

#### **Non-monetary manner of compensation (objective procedures)**

However, monetary compensation procedure is accepted as a requiring principle or guidance base in many of law systems such as Iranian systems, non-monetary procedures also can be helpful in some cases and even they are preferred over monetary procedures. Therefore, this is predicted in international trading issue.

- **Giving the fungible for lost property**

It is stated in enforcement liability related to fungibles about giving for lost property and in contractual liability, it is stated that it is not common to give the fungible instead. Generally, the contractual obligation issue is one of the following:

1. Giving fungible
2. Giving the overall property
3. Doing a certain task committed by promisor party
4. Doing a certain task not committed by promisor party
5. Not doing a certain task

In Iranian law, the judge doesn't require applying monetary procedures for compensation, but based on article 3 of civil liability code he is free to select the desirable manner. Based on what is acquired from articles 311, 312, 329 and 333 of civil law giving the lost property in preferred over other procedures (As. 328 and 317 and in contractual liability also this criterion can be used, however it has less examples.

#### - **Commodity repair**

Request for repairing the commodities even when it is transacted can be a kind of compensation, because based on this request, customer can implicitly accept the commodity and own and now he wants his commodity repair. In Iranian law if the commodity delivered is defected or considered defected, in accordance with article 422 of civil law customer is

authorized to terminate the contract or compensation receive. Since, there is no monopolized right for customer in this assumption, it is not possible to authorize him with request of commodity repair from seller based on article 3 of civil liability code and 478 and 481 civil law, because the latter articles are specific to lease. Unless, it is stated that commodity repair in fact an attempt to perform the obligation in which customer will be entitled to request for based on civil law, article 237. But in case of parties' compromise, there is no problem with issuance of repair verdict (article 10, civil law; principle of transactions interpretation). In French law however, in article 1644 civil law customer is authorized to select between terminating or receive the property, but judicial procedure and some of lawyers believe that judge is able to require seller to repair as an obligation.

#### **Conclusion and suggestions**

1. Compensable loss is considered a type of loss whose happening is evident. This interpretation is reasonable and its authentication doesn't need any theoretical reasoning. In Iranian and French civil law it is not stipulated.

2. In compensation the components should be evident and certain. In French law legislator stipulates these 2 types in article 1149 of civil law. But in Iranian law, there is a somehow different situation and there

are different ideas on whether the non-profit is also evident and certain compensation or not.

3. Legitimacy is not included in compensation. In Iranian law the mentioned issue is extracted by interpreting articles such as article 1 of civil liability code and lack of agreement on giving the right and forging liability and liability due to conventional actions also confirm this issue and its necessity. In French law also delinquency causes as one of pillars of civil liability that authors consider it sufficient for explaining the requirement of illegitimacy of imposed loss and it is not needed for legislator to stipulate. Immediacy of loss in French law, article 1151 of civil law stipulates the issue that in contractual liability the loss must be direct, i.e. it is the direct result of contractual commitment. In Iranian law in article 520 of civil procedure code approved in 1379, immediacy of loss is determined:

"About claiming of the loss imposed, plaintiff must prove the issue that the direct and immediate loss was due to lack of performing the contract obligation or delay or lack of submission of claimed; otherwise the court will reject the claim of loss."

4. Loss predictability. In French law in article 1150 of civil law in contractual liability only the predictable loss is claimable.

5. Loss of delay in cash payment at the time of loss payment. Iranian law in article 522 of civil law accepted its conditions. In French law, legislated in paragraph 1 of article 1153, claiming on loss of delay in payment is recognized officially and this is nothing but to attempt for compensate the loss of payment.

6. In Iranian law in civil procedure code based on stipulation of article 713, compound interest is forbidden. In French law, the legislator in article 1154 civil law considers allowable the receiving the compound interest.

7. Monetary manner of compensation in Iranian law is also the commonest procedures of compensation in contractual liability code and means to pay an amount of money for the loss. But this is not compulsory and in addition to parties' compromise, judge is also authorized in selection of the manner. On the other hand, based on article 3 of civil liability code, there are extensive authorities considered for judge to choose the manner of compensation it is true in contractual liability by abolishing its features considering the enforcement liability fundamental unity. There are different ideas on whether the judge is authorized to choose monetary and non-monetary manners of compensation in French law. In French law, Court of Justice accepted the authority and

freedom for judge to select the manner of compensation such as financial or non-financial until this is not inconsistent with issue of loss compensation. But France State Council believes that judge principally is responsible to apply financial compensating procedure and applying other procedures is possible in exceptional situations.

Therefore it can be concluded that there are many similarities between Iranian and French law systems and in cases of difference, the differences are not such that the compensation issue is neglected in accordance with law. Iranian civil law in some issues doesn't have any term for contractual breach or there are not suitable solutions. Therefore it is suggested that there would be reformation and making suitable decisions for compensation in accordance with civil law.

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