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CIVIL LIABILITY ARISING FROM THE DELAY IN PAYMENT OF THE CASH OF CHECK

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ABSTRACT

The purpose of civil liability is the compensation of the injured party, which is located in the opposite of criminal liability. What is clear is that under what terms and conditions, the signatories of check have responsibility. Which in fact it also involves the recompense of delay in the payment of the cash of check.The civil nature of the recompense of the delay in payment make the observance of the regulations of the code of civil procedure necessary. Accordingly, the check owner can demand the recompense of the delay in payment as well as the principal of the cash of check from the issuer. Study on the civil liability of the delay in payment of the cash of check confirmed the contradictions of various aspects which these contradictions resulted in different judicial decisions in single issue. Based on the findings, a legal person, unlike the real person, has the civil liability under the certain conditions that there isn't any significant difference in this regard. Also, the results of studies in the present study showed that the civil liability of the delay in payment of the cash of check is subject to the general rules of the civil liability. At the end, it became clear that the civil liability of delay in the payment of the cash of check is different from the recompense of the delay in payment.

Keywords: Civil liability, delay in payment, check, judicial proceeding.

INTRODUCTION

The concept of civil liability

In legal terminology, civil liability means a liability as the damage which person (or someone who being cared or managed by the person or the objects which is under the protection of he/she) brings to another and also, the person's responsible as a result of the violation of doing obligations arising

from the contract of civil liability is used against the criminal liability. Individual civil liability is the basis by which whoever causes damage to another is the responsible of damage compensation or his/her followed is guarantor for damage and the people are guarantor for damages to others and they pay the recompense from their income not from the public funds (Imami, 1989).

The responsibility in its general and vast meaning is the obligation to compensate the damage whether it is the origin of the damage of legal events or legal actions which in this sense, it will include the responsibility for the contract and coercive. Then, any obligation that the law put on the person to compensate the imposed damage to another, whether it has a contractual root or not.

The concept of delay

Literal meaning of delay: It means postpone, drop after and being late and its plural form is delays. This word hasn't an idiomatic meaning in the law and it is used with its literal meaning.

The concept of payment

Payment is used as a meaning of deal, pay and payment. It is used as a same meaning in the law. (Solvency and fulfillment of obligation).

Payment is often used about debts which its subject is payment of cash and otherwise, fulfillment of promise, doing commitment and similar terms are used.

Latin word: Although paymentis used for cash obligations, but it didn't apparently dedicated to it and it is also used for non-monetary obligations. (Etemadi , 1980).

General rules governing the recompense of the delay in payment of check

In an overall view, the recompense of the delay of payment in check hasn't any significant different with the recompense of the delay of payment in general. So it follows the same principles that the recompense of the delay of payment as a civil matter is its follower. The ability to claim recompense for delay in payment, the necessity of demanding it and the urgency of adversarial proceedings in the court are three rules governing the recompense of the delay of payment that will be discussed in this topic.(Jamieson, 1998).

The ability to claim recompense for delay in payment

Now, in the Iranian law, the recompense of the delay of payment is generally exigible. However, the recompense of the delay of payment as well as many other legal issues had an interesting history in our country. According to Article 719 of the code of civil procedure adopted in 1939, the recompense of the delay of payment in all claims that their subjects was cash was exigible and its

rate didn't exceed from 12 percent per year. The sentence of mentioned legal article was run until 1983, but in that year, receiving the recompense of the delay of payment was diagnosed contrary to Shari'ah standards by the Guardian Council. Despite receiving the recompense of the delay of payment was announced contrary to the legal rules, but receiving the recompense of the delay of payment was accepted over time. In the Act of banking without usury (interest) adopted on 1983/28/10 and the law of banks' collection of receivables adopted in 1989/22/7, banks are allowed to receive the recompense of the delay of payment.(Warren, 1990)

Despite the general rule contained in Article 719 of the Code of the Civil Procedure (1939), the legislator in the Article 11 of the law of issuing check 1976 (the current Article 12) was stated to the check owner to receive the recompense of the delay of payment. And even after that the receipt of the recompense of the delay of payment was declared contrary to Sharia by the Guardian Council jurists, some courts have concluded that because, in the theory of the Guardian Council, the Articles 712 and 719 of the Code of the Civil Procedure are only mentioned and there isn't any violation to the Article 11 of the law of issuing check, the check owner can demand the recompense of the delay in payment of check from the issuer. But with the inquiries that the Guardian Council was performed about this subject, the mentioned authority also extended his opinion on the opposition to receive the recompense of the delay in payment for check by Shari'ah standards. Finally, by adding an amendment to Article 2 of the law of issuing check by the Expediency Council on 1997/31/5, the check owner was allowed to receive the recompense of the delay in payment. The mentioned amendment stated that: "The check owner can request the issuer's conviction from the court to pay all damages and costs imposed directly and normally by him/her to receive their quest, whether it is before or after issuing the sentence." Accordingly, in Article 12 of the law of issuing check, suspending the prosecution of accused or suspend to perform the issued criminal sentence against the issuer is subject to the payment of the recompense of the delay in payment.(Callicott, 1980).

The necessity of demanding the recompense of the delay in payment

The recompense of the delay in payment is inherently a civil matter. A creditor who wants to demand the recompense of the delay in payment belongs to the quest from the

debtor, should state the claim in the legal authorities and demand the recompense of the delay in payment with the principle of the quest or independently.Although the recompense of the delay in payment of check is the loss resulting from the crime of issuing uncovered check, but its nature doesn't change for this reason. So, the recompense of the delay in payment of check should be also asked by the check owner as well as the principle of the check cash, but the check owner has the option to state his/her claim following the criminal proceedings in the criminal court or appeal a separate claim in the legal court. If the check owner wants to appeal the claim of demanding the cash of check and the recompense of the delay in payment following the criminal proceedings in the criminal court, he/she should respect to all formalities related to appeal the claim in the legal court, such as the presentation of the petition and cancellation of the stamp for legal fees (Article 11 of the Procedure Code of the General and Revolutionary Courts in Criminal Matters adopted in 1999).

The civil nature of the recompense of the delay in payment subjected it to the rule which is stated in the Article 2 of the Code of Civil Procedure of the General and Revolutionary Courts in Criminal Matters: "No court can adjudicate any claim unless a beneficiary person or persons or their attorney or deputy or legal representative has requested to handle the claim according to the law." The appointed sentence in this Article is a fundamental rule that governs all legal proceedings unless those that the rules have excluded it. This rule can be named "the necessity of demanding the right by the beneficiary in legal matters" which is actually one of the auditors of the general claims from the private claims; While handling a general claim, except in certain cases, doesn't need the demand of the beneficiary, the private claim cannot be handled without the demand of the beneficiary.Criminal court which handle the private claim following the general claim, should fully respect this rule; because the mentioned court also acts to handle the private claim in the succession of the legal court. The necessity of demanding the recompense of the delay in payment for check necessitate that the check owner is obliged to appeal the claim to receive the recompense of the delay in payment. The litigation basically takes place by presenting a petition to the competent authority (Bakhtar, 2007).

The need for adversarial proceedings

Belonging damage delay in cheque payment or each other demands are different between

holder of cheque and exporter; so the court needs to resolve this dispute. So court such as other civil based on evidence must investigate claiming of check holder entitled to achieve delay and the amount of it, legal provisions such as article 522 of the civil procedure code and law on the public and revolutionary courts the additional note to article 2 of the amendment of the law from approved cheque law by the Expediency council provides that the delay in damage payment is not absolutely demanding and the annual index of prices should be changed based on central bank till delay in damage payment based on the inflation rate to be charged. So claimant must be proved change index of commodity price that is not difficult. Because central bank announce official annual different indexes and it is enough claimant appeal official announcement. The court must determine the date that applies delay payment damage. While the above - mentioned Astfsariyeh- law must be calculated delay payment damage from cheque date until receipt date, article 12 cheque issuance law, knew start to calculating delay in damage payment from date of giving cheque to bank. The provisions of article 12 is similar to the provision of article 522 of the civil procedure code in the public and revolutionary court since according to article 522, the start time belongs to delay in payment damage is the date of creditor's demand. Apparently in article 12 of the cheque issuance law, the policy maker is known equal with offer the cheque to the bank. Calculating the delay in payment of claims date about cheque and other liabilities is critical that to these liabilities, the debtor should be pay his liability and doesn't necessarily need to demand of the creditor. However differences in legal regulations must be interpreted by the court and the start date of applying of delay in damage payment must be determined by the court ruling. Clearly judicial review is necessary for determine the amount of delay in damage payment. Proceeding to claim based on demanding delay in damage payment requires that court give opportunity to defend against the plaintiff's claim. Having defended opportunity is important, because this is one of the important principals for fair trial. The means of right's defense is civil that don't having been informed from claimer respond and don't convict without answer to the claim or opportunity to respond. This principal is sometimes as "the adversarial proceedings" and sometimes as "correspondence" and in any case the content must be opportunity to respond to the claim.

Thus, recipient of delay in damage payment of cheque exporter without consideration to rules of civil procedure against to fight and don't conform to the law; because the entitlement to compensation for the delay in payment and the amount should be in the court. (Johnson, 1993)

CONCLUSION

Responsibility should be based on work and it associate with error. Work, fault, causation and damage are element of responsibility. When civil liability arises that someone is bound to repair any damage that enters other. In explaining the responsibilities should be noted that in both criminal can civil, when the person who committed is noticed which doing act or omission that is harmed to other; this harm achieve to private person in civil responsibility and the latter harm include to society. The relationship between criminal responsibility with civil responsibility arise from the fact that often a single operation can lead to both civil and criminal liability, which must pay the sum of damages. In connection with the cheque issuance and in accordance with article 18 of the law amendment that policy maker is allowed to crime investigator in the criminal prosecution of crime if the issuer is one person, that person has civil responsibility but when cheque exporters are multiples, valid bank guarantee is divided to the responsibility of each one and if the level of responsibility is not clear must share equally between them that this case entitles about legal persons of cheque exporter. In this connection must be said that legal person has responsibility such as real person and if issues the cheque shall be paid by the Bank but if the cheque holder faced by lack of deficit of the subject for pursuing the subject and demanding cheque should be noted because of taking decisions by real persons of company and cheque export by management and CEO with two signature so cheque exporter and company have responsibility for paying amount of cheque to guarantee. In a general view of the delay in damage cheque payment is not much different with delay in damage payment generally, so following the same principles that delay in damage payment is as a civil matter. Because the delay in payment is essentially a civil matter.A creditor must bring up to fight the legal and seek delay in payment from debtor with the quest independent. Delay in cheque payment is due to harm of exporting losses cheque but due to this doesn't change the nature. But what became clear that civil responsibility to delay in cheque payment is different from harm due to delay in payment.

Cheque holder demand to prosecution and punishment of losses cheque exporter with criminal complaint and perhaps at the same complaint arises cheque amount and the harm of non-payment but this shape of demand is not enough for demanding cheque amount and other harms. Not only delay in payment but also cheque amount must be demand by submitting of petition and consequently criminal case. But the problem is which in the preliminary investigation submitted a petition and demand them is not possible and this impossible is not expected mechanism in the court but because the private action is possible by following civil fight after the public trial. This is the cause of creating such variables on civil responsibility resulting from delay in cheque amount that must be remedied this deficiencies.

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