

Assessing damage in the International Convention

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Abstract: International sale convention of the Goods 1980 of Vienna can be the product of theoretical and practical strive and wise persons of different nations for achieving maximum of understanding, harmony and unity in the international trade law. Trade is one of the most important forms of communication with other states and nations, in mean time it occurs the cultural, social and political trade Therefore, it is not useless that the international community has started one of its first efforts towards the legal integration and unity of this field. So far, many states have joined the Convention, a new international economic order with the creation of the World Trade Organization (WTO) and membership of many countries in it, has found a firm organization. Iran has no choice but it accepts the new economic order. Because, it accounts as a result of intellectual, rational, fair, reasonable and advanced effort, and aside from that it is a fact that no recognition of it cannot play the worthy role in the global scene. Therefore, Iran has done considerable efforts for joining to the international conventions and membership in the WTO. Undoubtedly, the International Sale Convention of Goods 1980 Vienna, is as one of the most important international conventions that related to trade, and it should be considered and provided the necessary preparations for accession to it.

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Introduction

Each country according to the historical, cultural, social, economic, political and geographic characteristics has an independent legal system that is more or less different with other countries, But the important part of these differences related to the evolution and growth of human s knowledge, technology and closing people to each other and further development of the means of communication, has unjustified, the undesirable effects. We can wipe many of them without hurting the authenticity of the cultural and historical identity of a nation, Iran law for joining the International Sale Convention of Vienna 1980 requires to study the points of similarities and differences with the case before and removes barriers.

First topic: Damages

For the event, accident arisen by the vehicle and causes that Responsibility of the holder that must pay damages to another. Damage (to deduct Kha') from the root word "Khsr" means injury, harm, damages, loss, in public, where a defect is made in property or lost the certain profits or damaged the health and dignity of the persons, that is said that the loss (damage) is created

Second topic: Types of damage

When someone is really responsible that losses is reached to another. These damages have The various forms of compensation and when it is considerable that it has to be the clear description. And it is no situations where is a limit to repair. In most cases, the claimed damage, is the damage that a private

individual hurts to another private individual, and damage in this case is individual. But sometimes it happens that some groups have complained the collective damage that damage to them

First Speech: material damage

This type of damage is changeable with donating money and it may also occur in case of the absence of object (Destruction of the object) or a lack of interest (businessman due to the general seller has delivered the goods to him so he cannot sell those goods in the markets) for the financial compensation, the property can be a material object (losses resulting from the collision of two cars) and the human (medical costs and disability) or financial benefits (damage to business cities).

Two words: moral damage

This damage can take various forms that it includes harming to the character s right (right near the libel) And physical pain resulting of car crashes or psychological harm to anyone on the result of an accident that a change is found in his face or her limbs and he suffers from it or harming to emotional feelings like close relative s pain of someone who was killed in the crash. But the problem of the moral damage that be repaired with money, is disputed among legal scholars.. Law and judicial procedures in most countries haven't paid attention to these substantial arguments and moral damage have been accepted with money. French civil law doesn't pay attention to moral damage, but it does not negate moral damage.

Third Topic: direct damage(immediate)

The purpose of the direct damage, the damage that is a result of the immediately damaging act in front of it, there are indirect losses that are the losses among one or more intermediaries and the effect of the act appears with the few intermediaries.

In Iran law, article 520 of Law. d. m. new Act of 1379, in the immediate area of damage is addressed: " about the demand for damages, claimant should prove that the direct damage is a result from immediate lack of commitment or its delay and or a lack of submission. Otherwise the trial court will reject the claim But in the Convention has not been mentioned to the description and materials related to contractual liability and redress for damage resulting from breach of the commitment (74, 75, 76, 77 and 78) in this respect are absolute The interpretation of the Convention should be considered in one of three following assumptions: The interpretation of the Convention should be considered one of the following three assumptions:

1 - It can be said that the Convention was in the expression position of conditions and compensation of damages resulted from breach of contract while is not mentioned the conditions of the direct damage Therefore, according to the convention indirect damage are demandable.

2- Another possibility, this is that we say that the Convention is silent on this issue. And in the expression of all the qualities and conditions of the damage is not repairable. In this case, in accordance with Article 7 of the Convention, we should refer to the general principles which constitute the foundations. And the One of the principles can be the base of transportation of affairs and a concepts of the conventional wisdom and common human (rational construction of the world) (meant in articles 8, 9, 16, 18...).

3- it may be stated that on one hand the Convention is silent on this issue, On the other hand, the general principles signified in this direct Therefore, according to Article 7, it shall refer to the competent national law in accordance with the rules of conflict resolution of private international law, and searches Judgment in it.

Section IV: predictable damage

Article 74 of the Convention, the obligation of the contractual liability violation is limited to foreseeable damages. Predictable criterion of damage is in this case: "With regard to the second part of Article 74 of the Convention, two criterions both personal criterion and typical criterion have been introduced as an alternative.

Sometimes someone is the commitment to a contract and due to personal reasons of damage forecasts the breach of contract, but every one that is

wise and knowledgeable in the circumstances and conditions governing the contract will predict the occurrence of damage.

Section Five: Theories of the compensation of damage

Compensation of damage regardless of the laws and regulations follows general principles. It may that different legal systems are also different with each other in procedures and principles

First Speech: different theory

This theory says that compensable damages have been obtained by the difference between the actual people with someone who wants to be and isn't resulted in harmful interference incident. This theory has been proposed in law of Germany that specifically applied in damages arising from breach of contract. Roots of the theory is in law of Roman.

Second Discourse: Theory of same position (the same position)

According to this theory, the compensation of the injured party must be in the same position that if the contract had been performed it was in the same position. The theory has been proposed in the discussion of violation of contracts in the law Kaman la (specifically England). Generally in English law is predicted three compensations for breach of contract.

A) Restitution of property.

B) Reinsurance losses (caused by reliance on the opposite side).

C) Expected losses, on the base of the type of compensation, with regard to the rational criterion and routine matters, the expected benefits should be compensated for the injured party.

Third speech: full compensation.

The theory can be inferred from the French law. Unlike Kamanla s law that plans titles and types of damages in the law of contracts. In French law, law of contracts and other contracts is known as the start point for assessing the damage and the full compensation of the injured party.

In Islamic law also several rules such as harmless, Tsbyb, pride and iodine liability, emphasizes on compensating losses and restoring the injured situation.

Section VI: Special attributes of reparable damage

Characteristics and requirements of international trade, such as focusing on property, the quick, easy exchanges and quick resolution without the complexity of disputes and commercial litigation has been caused that in The Convention of the International Sale of Goods (1980 Vienna), is provided Special attributes for damages under this Convention.

First Speech: damage must be Financial no physical

According to Article 5 of the Convention, physical damage and its compensation are not covered by the provisions of the Convention, and only financial losses are included in it.

This Article in fact gives some indications of the Regulation in accordance with Article 4 of the Convention Which the Convention only governs the sale contract and the rights and obligations of the seller and buyer. And with regard to this, the physical injuries or death of persons, such as the seller is caused by goods is outside of the scope of the Convention, and Article 5, has been based on it.

Two words: damage must be material rather than spiritual

This attribute is not specified in the Convention, but it can be inferred by according to the criteria of Article 4 of the Convention (just rights and obligations arising from the contract of sale is subjected to the Convention), Article 5 and or the agree concept with it. Primarily investigating the spiritual damage resulting from damage to the moral integrity and dignity of the individual's personality is outside International transactions of commercial property (Paragraph 1 of Article 7). So investigating claims related to moral damage is subject to the competent national law that in accordance with the rules of conflict resolution of private international law is determined.

Three words: damage is on property of committed person to contract of international sale not a third party

Infererof Articles 4 and 74 of the Convention, damage on third party property caused by breach of contractual obligations of international sale that is outside the scope of the Convention and it should be investigated according to the competent national law. Feature of international trade requires that third parties are not subject to the Convention of contracts of international sales extracts them and deals with the cases they are subject to the competent national law (paragraph 1 of Article 7).

Section VII: the delay in the payment of cash

In accordance with Article 78 of the Convention, in case of delay in paying the price or any other cash by one of the parties, the other party will be entitled to receive the interest without breaking his right in the claim of damages based on Article 74.

The considerable points are about regulation

1- Regulation of Article above shall be paid not only to the delay in payment of price but also the delay in payment of any amount to be postponed.

2- It isn't necessary that not paying to the aforementioned funds leads to a breach of contract.

3- In contrast to the legal systems in which the interest (loss delay in payment) is a part of damages that may be impossible to claims under the general rules, The Convention is decreed that the committed person can also charge interest of payments of cash, according to the general rules (Article 74) of the demanded damages.

4- In the Article, the interest rate is not determined and the general rules for it has not been determined. Due to the large difference of countries in rate of damage, the possibility of attainment agreement impossible In addition, the economic situation varies and the determination of a constant rate of interest is not correct.

5- In the mentioned Article isn't specified that interest for what the period of time shall be calculated and paid, and in this case, it also shall be referred to paragraph 2 of Article 7 to the competent national law.

6- Proof of damage in the delayed time of the payment of cash isn't require and the damage is assumed.

In Iran law before, the new Civil Procedure Act according to the Guardian Council, a delayed damage of payment of interest claimed that it is illicit. Apparently, with the reason that with the conclusion of the contract, the price as liability that customer pays against salesperson as if the sale person owes.

Section VIII: assessment time of damage

The purpose of the civil liability, to the extent possible, to restore the injured party to the first state and the principle of full compensation for the loss, damage may be due to the properties of its origin is increasing. At the convention, except for certain way of damages under Article 76, the assessment time of damage resulting from breach of contractual obligations isn't mentioned. Some commentators have said that the judge or arbitrator must determine the best and most suitable assessment and in this case isn't necessary to refer to domestic law. Because the issue is the Convention unless there is ultimately no choice but to refer to national law (Article 7, paragraph 2).

Section IX: Special procedures settled in the Convention of the International Sale of Goods (1980 Vienna) in assessing damage.

In The Convention, two special ways of assessing damage in Art75 and 76 settled that both to terminate the contract of sale by one of the parties One (Article 75) has been specified to alternative transaction and, the other, when applied that such a deal hasn't been done. Generally, in these methods, damage with the considerable difference between the actual commercial value of the goods at the date of implementation of the contract and its price is determined. On the other hand, the implementation of Art75 and 76 is not precluded that if the losing party losses more than the amount of damage that can be

attributed to the excess amount, in accordance with Article 74 of the demand of compensation.

Section I payment of monetary damages

In convention of priority, this way can be inferred from Article 74, because in the definition of damage caused by the breach of contract, the statement "... an amount equals to the losses incurred by the other party..." and the word "amount" in monetary equivalent. The spirit of the Convention and the general principles based on acceleration and facilitation international trade priorities to this procedure (Article 7).

Some commentators believe that Article 74 does not leave no doubt that the only way of compensation is payment of money. But with regard to the interpretation of the provisions of the Convention (Article 6) and the principle based (Article 7) and the principle of full compensation for the damage is not exact. A method of remedy shall not be exclusive to the one, but the parties and the judge must be able in the case of necessity, choose the most appropriate method according to the circumstances of the issue, Although often Ansbyway is same way of paying money but it isn't likely that the cases in other ways are more compatible.

First Speech: reduced price

One way that has been proposed as a way of monetary compensation for damages in the Convention, establishing reduced price under Articles 45 and 50.

In accordance with Article 50 of the Convention, In case of surrender of unrealistic goods by the vendor, the customer may has been submitted attribute to different from the value of the submitted goods on the yield day and value of the goods in accordance with the contract on the yield day, and reduced the price. This method in the countries with the system of civil law written is contrary to the rights of Kamnla has been defended and its roots comes back to Roman law. This method in most former socialist countries and the Third World as a complementary method of compensation is included. And its application is limited to cases that the vendor is a blame and he has the right of the repair and fixes defects (lack of conformity of the goods) This method of compensation is an important and well-known domestic method that it is in daily norm of the internal and international trade.

Second Speech: repair of goods

According to paragraph 3 of Article 46 of the Convention, the customer can ask the vendor compensate non-compliance of the submitted goods with its fix (Because the faulty goods has been submitted), unless such request according to the circumstances is unreasonable or has to be paragraph 3 of Article 35. Requests of repairing goods even when

traded case generally is in disclosure so it can be considered as a form of compensation. Because this application, the client implicitly accepts the ownership of his goods and wants to repair his property. Two special method of assessing damage stipulated in the articles 75 and 76 of the Convention, is significantly effective in accelerating and facilitating the assessment of damage and the procedure.. The generally, orientation of the Convention on the choice of ways of assessing according to the principle of full compensation for damage includes acceleration of the diagnosis of occurrence and amount of damage and facilitation of international commercial disputes and their resolve which in domestic law can be useful with international sale of goods Act 1980 Vienna Convention, the legal system agrees about the investigated subject of the following cases:

1-The principle of full compensation for the damage and to restore the former situation is as much as possible.

2- Ways of paying monetary damages is in compensating the principle.

3- Judge personally or by consent of the parties is free in choosing the most appropriate method of compensation that isn't contrary to the provisions of Rules.

4- Parties of contract can compromise with any type of compensation, which shall not be inconsistent with the provisions of international law, and the choice is compulsive for the judge.

5-monetary way of compensation by the resale of goods that in the Convention and the United States, according to the agency theory is accepted In Iranian law both based on the garnishment or seizure and sale of property means (condemned) General Documents of the debtor's property (committed) and the extensive powers of the Court under Article 3 of the law of civil liability.

6- the way of reducing price prescribed in the Convention on the Rights of France also accepted, as well as the realization of the rights of disadvantage option or discrimination option are applicable characteristics.

7-the way of repairing goods inserted the French Convention is accepted by legal case, In the rights of Iran both in case consent of parties and or even as continuous of doing the same undertaking seems plausible.

8- objective ways of monetary compensation are not limitative, and the creation and adoption of new methods will not be improbability.

In fields of compensation for damages caused by the breach of contract is studied many coordination between the provisions of the Convention on the International Sale of Goods Act 1980 and legal systems of the Vienna. This represents the theoretical

and practical efforts to create uniformity and legal unity among the world of countries in terms of international trade and also creates effective steps in coming up the artificial boundaries of human alienation and unity dominance over multiplicity.

Section XI: calculation of damages in case the occurrence of an alternative transaction (Article 75): According to Article 75 of the Convention:

1. If the sale is terminated by the seller (due to breach of contract by the other party: articles 49 and 64).

2. Cancellation does an alternative transaction:

If he is the customer, a similar product from another vendor is purchased and if he is seller, the goods are sold to another (compensating sale is located).

3. Between termination of the principal contract and alternative transaction, the orthodox duration the happened, Because If the distance between them is greater than this value, the second transaction is not substituted instead of terminated transaction (with customary precision), in addition it is possible that undertaker is overcharged by the fluctuating price.

4-the approach of an alternative trade is conventional

Vendor should not sell his goods by auction and customer buys them with exorbitant prices. The conventional form of substitution place should be regarded, because transportation of goods has costs, and the costs in accordance with Article 74 (refer to it) as damages are demandable. Commitment of stake holder in respect to the conventional approach according to interpretation of some commentators, is a clear example of the commitment that reduces the suffered damage (Article 77).

5 consumer buys goods to cost more than the purchased price in the terminated contract and the vendor sells them less than that price. By gathering these circumstances, the claimant for damages can exact the different price of the contractual goods (price shall be terminated in the contract) with the price of the goods in an alternative transaction (price in new contract) as damage caused by the breach of contract by the pledge,

Conclusion

The generally, orientation of the Convention on the choice of ways of assessing according to the principle of full compensation for damage can be useful in accelerating diagnosis of the occurrence and amount of damage and facilitating to resolve international commercial disputes in domestic law

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