

Comparative study on structure of labour dispute settlement boards in Iran and some European countries

Saeed Reza Abadi^{1*}

*Assistant Professor, Faculty of Law, Shahid Beheshti University,
Tehran, Iran*

Hamed Edrisian²

*Ms. Student, Economic Law, Faculty of Law, Shahid Beheshti
University, Tehran, Iran*

Received: 2016/06/01 - Accepted: 2016/09/04

Abstract

One of the most important and effective measures of governments in social, economic and cultural fields is the regulation of relationships between laborers and employers. Different position of laborers and employers, the large number of people engaged in this relationship and their considerable influence over each country's economy shows the importance of this issue. Therefore, it is apparent any dispute over employment relationships should quickly be heard through labor dispute settlement boards. Although the structure of these institutions in different countries has been affected by specific international standards, there are wide disparities among them which have serious effects on their efficiency. In this essay, we tend to state the Structure of Labour Dispute Settlement boards in Iran and some European countries from four perspectives: independency, competence, pre-trial stage and quality of judges. We also explain the relevant international documents in order to find their remarkable features which we can implement in the Iranian legal system.

Keywords: labor court, labor procedure, competence of labor dispute settlement boards, conciliation, lay judge.

1. Corresponding Author, Email: s_abadi@sbu.ac.ir

2. Email: Hamededrisian@yahoo.com

References

1. Abadi, S.R. (2014) Decent Work in Iran, First Edition, Tehran, Mizan Publisher (in Persian)
2. Abadi, S.R. and Others (2014) Measuring Deficits and Legal Analysis of Decent Work in Iran, Public Law Research, No. 39, pp. 91-128. (in Persian)
3. Amini, A. and Pajooohan, J. (2003) An Analysis of Factors Effecting Labour Force in Large Industrial Firms in Iran, The Journal of Planning and Budgeting, No. 78, pp. 77-108. (in Persian)
4. Altaf, M.A. (2014) Interaction of Labour Law and Economic Growth: Case Study of Sheikhpura, School of Humanities and Social Sciences Lahore University of Management Sciences.
5. Axel Windel, P., Yang, T.Sh. (2012) "Is There a Need for Independent Labour Courts?", National Taiwan University Law Review, NTU Law Review 7(2), pp. 319-341.
6. Blanpain, R. (1982) Comparative labour law and industrial relations, pringer Science.
7. Blenk, W. (1989) Industrial action and procedural aspect: European labour courts, Paris: Proceedings of the Third Meeting of European Labour Court Judges.
8. Blenk, W. (1987) European labour courts: Current issue, Geneva: Proceedings of the Second Meeting of European Labour Court Judges.
9. Bronstein, A., Thomas (1995) Constance, European labour courts: International and European labour standards in labour court decisions, and jurisprudence on sex discrimination, Geneva: International Labour Office.
10. Clark, P. (2002) Labour Court Lay Judges, Stockholm: Tenth Meeting of European Labour Court Judges.
11. Donovan, P., Oumarou, M. (2013) Labour Dispute Systems: Guidelines for improved performance, International Training Centre of the International Labour Organization.
12. Essenberg, B. (1986) Labour courts in Europe, Geneva: Proceedings of a meeting organized by the International Institute for Labour Studies.
13. Evju, S. (2000) Labour courts and autonomy: Should labour courts maintain separateness from other courts of law?, 8th Meeting of European Labour Court Judges.
14. Ghobadi, H. (2015) Labour Procedure, Second Edition, Jungle Publisher. (in Persian)
15. Hamedani, A.A. (1381) The Procedure of Labour Dispute Settlement Boards, Second Edition, Labour and Social Service Institute. (in Persian)
16. Hamedani, A.A. (1964) Labour Law in Iran, Law Today Journal, No. 9-10, pp. 44-46. (in Persian)
17. Heron, R., Vandenabeele, C. (1999) Labour Dispute Resolution, International Labour Organization.
18. Kavooosi, F. (1977) New Bill of Labour Law, Minister of Cooperatives, Labour and Social Welfare (in Persian)
19. Kirchner, J. (2010) Key Aspects of German Employment and Labour Law, Springer-Verlag Berlin Heidelberg.

20. M. Zack, A. (2005) "Conciliation of Labour Court Disputes", Comparative Labour Law & Policy Journal, Vol. 26, No. 3, pp. 401-420.
21. Moradi, B. (2010) The Procedure in Labour Dispute Settlement Boards and administrative Justice Court, Work and Society Journal, No.116-117, pp. 57-85. (in Persian)
22. Moslehi, A.H. and Sadeghi, M. (2004) An Overview of Alternative Dispute Solution, Nameh-e-Mofid, No. 46, pp 123-150. (in Persian)
23. Rules of The Game: A brief introduction to international labour standards (2014) International Labour Organization, Revised Edition
24. Saloheimo, J. (2007) Decision-making in Labour Courts, XVIth Meeting of European Labour Court Judges.
25. Sargos, M. Pierre (2004) Do we need labour courts?, Budapest: Twelfth Meeting of European Labour Court Judges.
26. Schinz, R. (2007) Labour Courts in Germany and their Influence on Settlement of Labour Disputes, High-level Tripartite Seminar.
27. Schmidt, I. (2014) The Federal Labour Court, Germany: Hugo-Preuß-Platz 1, 99084 Erfurt.
28. Shams, A. (2003) Civil Procedure, Vol.1, Third Edition, Tehran, Mizan Publisher. (in Persian)
29. Tashakor, Z. and Others (2004) Employer Perspectives on Labour Law, Islamic Parliament Research Center. (in Persian)
30. Zack, A. (2005) The Use of Mediation/Conciliation by Labour Courts , Bologna, Italy: Thirteenth Meeting of European Labour Court Judges.

Sites

31. <http://www.mcls.gov.ir/fa/aboutus/tasks> . 2016/4/25
32. http://www.servat.unibe.ch/icl/gm00000_.html . 2016/4/25
33. <http://www.legislation.gov.uk/ukpga/2007/15/part/1> . 2016/4/25

The sociological study of transnational law, globalization and global solidarity

Asadollah Babaiefard*

Assistant Professor, Department of Social Sciences, Faculty of
Humanities, University of Kashan, Kashan, Esfahan Iran

Received: 2015/06/12 – Accepted: 2015/08/15

Abstract

In current study, the relationship between *Transnational Law*, *Globalization* and *International Solidarity* has been studied, and Talcott Parsons's *Structural Functionalism* approach has been used as *Theoretical Framework*. This study is based on the assumption that any inconsistency between the *Legal System* and other *Social Systems* can result in *Social Anomie*. In the next part of the paper, the subject of *Transnational Law*, *Natural Law* and *Human Rights* is discussed. By combining *Structural Functionalism* approach and *Globalization* approach, towards the end of the study, the author suggests that because of *International Relationships*, it is nowadays impossible to establish security and justice over the world based on *Particular Legal Systems* and they can be reached only through *Global Consensus*. In this case, International Law Organizations can play an important role. International Solidarity is possible only through free dialogue between different nations and their participation in a Global Community.

Keywords: globalization, international solidarity, sociological, structural functionalism, supranational law.

* Email: babaiefardm@gmail.com

References

1. Abazari, Y. (1998) *The Reason of Sociology*, Tehran, Tarhe Nou Publications. (in Persian)
2. Abdi, A. (1992) *Issues on Sociology of Law in Iran: A Study on Factors influencing Conflict of Fact and Law in Iran*, Tehran, Islamic Revolution Publications and Training. (in Persian).
3. Ahmadi, H. (2002) Globalization: Ethnic Identity or National Identity?, *National Studies Quarterly*, Third Year, No. 11, pp. 5-26. (in Persian)
4. Alamdari, K. (2002) *The Global Crisis and Critique of the Theory of Clash of Civilizations and Dialogue of Civilizations Theory*, Tehran, Nashre Tosee Publishing. (in Persian)
5. Alizadeh, A. (2008) *Foundations of Social Approach to Rights: An Inquiry into the Sociological Theories of Law and the Foundations of Iran's Rights*, Tehran, The Study and Compilation of Humanities Books Organization ("Samt"). (in Persian)
6. Arjmand Siahpoosh, E. (2010), *Sociology of Law*, Tehran, Sociologists Publications. (in Persian)
7. Aron, R. (1993), *Main Currents in Sociological Thought*, Translated by Bagher Parham, Tehran, Islamic Revolution Publications and Training. (in Persian)
8. Babaiepard, A. (2013), *Identity Crisis in Contemporary Iranian Society: A Historical, Experimental Perspective*, Tehran, Chapakhsh Publications. (in Persian)
9. Babaiepard, A. (2014) *Critical Issues in Sociology: Epistemology, Methodology and Theorizing*, Sociologists Publication in association with Kashan University Press. (in Persian)
10. Babaiepard, A., Saroukhani, B. (2012) *The Internet, Globalization and Youth Cultural Identity in Iran: Challenges and Opportunities*, Tehran, Didar Publications. (in Persian)
11. Barney, D. (2004) *The Network Society*, United Kingdom and United States of America, Polity Press.
12. Beck, U. (1999) *World Risk Society*, United Kingdom and United States of America, Polity Press.
13. Beck, U. (2000) *What is Globalization?* Translated by Patrick Camiller, United Kingdom and United States of America, Polity Press.
14. Borgatta, Edgar F., Montgomery, Rhonda J.V. (2000) *Encyclopedia of Sociology*, Volume one, Second Edition, Detroit, San Francisco, London and New York, Macmillan Reference USA.
15. Cavanagh, A. (2007) Sociology in the Age of the Internet, in: *Sociology and Social Change*, Series Editors: Alan Warde and Nick Crossley, London and New York, Mc Graw-Hill Education and Open University Press.
16. Cohen, R., Kennedy, P. (2000) *Global Sociology*, London, Macmillan Press.
17. Coser, L. (1993), *Masters of Sociological Thought*, Translated by Mohsen Solasi, Tehran, Elmi Publications. (in Persian)
18. Dreyfus, H., Rabinow, P. (2012) *Michel Foucault: Beyond Structuralism and Hermeneutics*, Translated by Hussein Bashiriyeh, Tehran, Ney Publishing. (in Persian)

19. During, S. (2005) *Cultural Studies: A Critical Introduction*, London and New York, Routledge.
20. Fal, I. (2003) The Universality and the Relativity of Human Rights from the point of view of the World Conference, in: *Human Rights and Humanitarian Rights: Striving for Globalizing*, Edited by Daniel Warner, Tehran University, Faculty of Law and Political Science Publications. (in Persian)
21. Fay, B. (2005) *Contemporary Philosophy of Social Science: A Multicultural Approach*, Translated by Khashayar Deyhimi, Tehran, Tarhe Nou Publishing. (in Persian).
22. Flichy, P. (2007) *The Internet Imaginaire*, Translated by: Liz Carey Libberecht, London, Cambridge, Massachusetts, The MIT Press.
23. Foucault, M. (1999) *Discipline and Punish: The Birth of the Prison*, Translated by Nikoo Sarkhosh and Afshin Jahandideh, Tehran, Ney Publishing. (in Persian)
24. Frankel, J. (1991) *International Relations in a Changing World*, Translated by Abdulrahman Alem, Tehran, Institute for Political and International Studies. (in Persian)
25. Freedman, D. (2007) Internet Transformations: "Old" Media Resilience in the "New Media" Revolution, in: *Media and Cultural Theory*, Edited by: James Curran and David Morley, London and New York, Routledge.
26. Gannon, M.J. (2008) *Paradoxes of Culture and Globalization*, Los Angeles, London, New Delhi, Singapore, SAGE Publications.
27. Giddens, A. (1994) *Sociology*, Translated by: Manouchehr Sabouri, Tehran, Ney Publishing. (in Persian)
28. Giddens, A. (1995) *Living in a Post-Traditional Society*, in: Ulrich Beck, Anthony Giddens and Scott Lash, *Reflexive Modernization: Politics, Tradition, and Aesthetics in the Modern Social Order*, Polity Press in association with Blackwell Publishers.
29. Giddens, A. (2000) *The Runaway World: Issues on Global Integration*, Translated by Ali Asghar Saeedi and Yusuf Haji Abdulwahab, Tehran, Science and Literature Publishing. (in Persian)
30. Golmohammadi, A. (2002) *Globalization, Culture, Identity*, Tehran, Ney Publishing. (in Persian)
31. Gurvitch, G. (1973) *An Introduction to Sociology of Law*, Translated by Hassan Habibi, Tehran, Faculty of Social Sciences Publishing, in association with the Institute for Social Studies and Research. (in Persian)
32. Gurvitch, G. et al. (1992) *Law and Sociology*, Translated by Mostafa Rahimi, Tehran, Soroush Publications. (in Persian)
33. Habermas, J. (2001) *Globalization and the Future of Democracy: The Postnational Constellation*, Translated by Kamal Pooladi, Tehran, Markaz Publishing. (in Persian)
34. Hall, S. (1996) *The Question of Cultural Identity*, in: Stuart Hall, David Held and Tony Mc Grew; *Modernity and its Futures: Understanding Modern Societies, An Introduction*, Polity Press in association with Blackwell Publishers.
35. Held, D., Mc Grew, A. (2002) *Globalization / Anti - Globalization*, United Kingdom and United States of America, Polity Press in association with Blackwell Publishers.

-
-
36. Held, D., Koenig-Archibugi, M. (Editors) (2003) *Taming Globalization: Frontiers of Governance*, By: Mathias Koenig-Archibugi; Robert Hunter Wade, Joseph E. Stiglitz, Robert E. Goodin, John Gerard Ruggie, Robert O. Keohane and David Held, United Kingdom and United States of America, Polity Press in association with Blackwell Publishers.
 37. Holub, R. (1996), *Jürgen Habermas; Critique in the Public Sphere: Habermas Philosophical debates with Popperians, Gadamer, Luhmann, Lyotard, Derrida and others*, Translated by Hussein Bashiriyeh, Tehran, Ney Publishing. (in Persian)
 38. Inglis, D. (2005) *Culture and Everyday Life*, in: *The New Sociology*, Series Editor: Anthony Elliott, London and New York, Routledge.
 39. Jalali, M., Khakzad, H. (2012), Globalization of Commercial Legal Documents and its impact on Criminal Liability Originating from Cheque in the Iranian Legal System, *Comparative Law Studies Quarterly*, Volume 3, No. 2, Autumn and Winter 2012, pp. 23-40. (in Persian)
 40. Johnson, G. (1998), *The Universal Declaration of Human Rights: A History of its Creation and Implementation*, Translated by Mohammad Jafar Pooyandeh, Tehran, Ney Publishing. (in Persian)
 41. Katouzian, N. (1373), *Philosophy of Law*, Volume I: The Definition of Rights, Tehran, Tehran University Press. (in Persian)
 42. Keynia, M. (1969) *Preliminary Overview of Law*, Tehran, Tehran University Press. (in Persian)
 43. Lechner, F.J., Boli, J. (Editors) (2003) *The Globalization Reader*, United Kingdom and United States of America, Blackwell Publishing.
 44. Leclaire, G. (2005) *Cultural Globalization: An Examination for Civilizations*, Translated by Saeed Kamran, Tehran, Ministry of Foreign Affairs Publications. (in Persian)
 45. Levy-Bruhl, H. (1991) *Sciology of Law*, Translated by Abolfazl Ghazi, Tehran, Tehran University Press. (in Persian)
 46. Malek Mohammadi Noori, H.R. (2001) *Introduction to International Law*, Tehran, Shirazeh Publishing and Research. (in Persian)
 47. Miller, P. (2005) *Subject, Dominion and Power in the views of Horkheimer, Marcuse, Habermas and Foucault*, Translated by Nikoo Sarkhosh and Afshin Jahandideh, Tehran, Ney Publishing. (in Persian)
 48. Moghtader, H. (1998) *Public International Law*, Tehran, Institute for Political and International Studies. (in Persian)
 49. Nanda, Ved Pi (2003) Hinduism and Human Rights, in: *Human Rights and Humanitarian Rights: Striving for Globalizing*, Edited by Daniel Warner, Tehran University, Faculty of Law and Political Science Publications. (in Persian)
 50. Niezen, R. (2004) *A World Beyond Difference: Cultural Identity in the Age of Globalization*, London, Blackwell Publishing.
 51. Oxford, B. (2004) *Global System: The Economy, Politics and Culture*, Translated by Homeyra Moshirzadeh, Tehran, Foreign Ministry Institute for Political and International Studies Publications. (in Persian)
 52. Parish, J., Parker, M. (2001) *The Age of Anxiety: Conspiracy Theory and Human Sciences*, United Kingdom and United States of America, Blackwell Publishers.

-
53. Perrons, D. (2004) *Globalization and Social Change: People and Places in a Divided World*, London and New York, Routledge.
 54. Rahmanifard, Sh. (2007) *Sociology of Law* (The Pattern of Organizing issues of Modernity), Tehran, Donyaye Sabz Publishing. (in Persian)
 55. Ranjbarian, A.H., Kamalinejad, H. (2013) The Teachings of Prominent International Lawyers, *Comparative Law Studies Quarterly*, Volume 4, No. 2, Autumn and Winter 2013, pp. 37-56. (in Persian)
 56. Rantanen, T. (2006) *The Media and Globalization*, London, Thousand Oaks, New Delhi, SAGE Publications.
 57. Robertson, R. (2003) *Globalization: Social Theory and Global Culture*, Translated by Kamal Pooladi, Tehran, Sales Publication. (in Persian)
 58. Rocher, G. (1997) *The Sociology of Talcott Parsons*, Translated by Abdolhussein Nikgozar, Tehran, Tebyan Cultural-Publishing Institute. (in Persian)
 59. Saeed, M. (2003) Islam and Human Rights, in: *Human Rights and Humanitarian Rights: Striving for Globalizing*, Edited by Daniel Warner, Tehran University, Faculty of Law and Political Science Publications. (in Persian)
 60. Salimi, H. (2001). Globalization: Evidences and Interpretations, *National Studies Quarterly*, Third Year, No. 10, pp. 75-97. (in Persian)
 61. Sanei, P. (1968) *The Rghts and the Society: On the Relations of The Rghts to the Social and Psychological Factors*, Volume 1, Tehran, Tehran University Press. (in Persian)
 62. Sanei, P. (2002) *The Rghts and the Society: On the Relations of The Rghts to the Social and Psychological Factors*, Tehran, Tarhe Nou Publishing. (in Persian)
 63. Schaefer, R. (2005) *Sociology*, London, Montreal, New Delhi and New York, Mc Graw-Hill.
 64. Scott, J. (Editor) (2006) *Sociology: The Key Concepts*, London and New York, Routledge.
 65. Strauss, L. (1994) *Natural Rights and History*, Translated by Bagher Parham, Tehran, Agah Publications. (in Persian)
 66. Tavassoli, Gh. (1992) *The Sociological Theories*, Tehran, The Study and Compilation of Humanities Books Organization (Samt). (in Persian)
 67. Tavassoli, Gh. (2006) The Investigation of the dominant discourses on Globalization, *Journal of Social Sciences*, No. 27, pp. 88-112. (in Persian).
 68. Thompson, J. Brookshire (2001) *The Media and Modernity: A Social Theory of the Media*, Translated by Masoud Owhadi, Tehran, Soroush Publications. (in Persian)
 69. Unama, Y. (2003) Striving for Intercivilization Human Rights: The Universal Human Rights versus Relative Human Rights from Asian point of view, in: *Human Rights and Humanitarian Rights: Striving for Globalizing*, Edited by Daniel Warner, Tehran University, Faculty of Law and Political Science Publications. (in Persian)
 70. Waters, M. (2000) *Globalization*, Translated by Ismail Mardani Givi and Siavash Moridi, Tehran, Industrial Management Organization Publishing. (in Persian)

The historical evolution of commercial frameworks, from contractual arrangements to corporations

Mostafa Bostani^{1*}

L.L.M in International Commercial and Economic Law, University of Tehran, Iran

Mahmood Bagheri²

Associate Professor, Faculty of Law, University of Tehran, Iran

Received: 2014/12/10 – Accepted: 2015/10/21

Abstract

Mudaraba is an old method of finance and trade. Comparative historical studies show that Mudaraba and a very similar European institution that appeared first in the 12th century in Italy and then in all Europe *i.e.* Commenda, had a very important role in the history of trade; especially in maritime trade of middle ages. From 16th century it gradually started to lose its importance and was then replaced by corporation in the Western trade, while at the same time there was no sign of such development in the Middle East and the Islamic world. In this essay, we discuss the origin of Mudaraba, its importance in the history of trade, and the causes for its appearance and come down, understanding that the non-recognition of legal personality was the major obstacle of the Islamic law to establish corporations.

Keywords: Commenda, history of trade, corporation, legal personality, Mudaraba.

1. Corresponding Autho, Email: m.bostani@ut.ac.ir

2. Email: mahbagheri@ut.ac.ir

References

1. Abdul Gafoor, L.M.A. (2001) Mudaraba-based Investment and Finance, Available at: <<http://www.islamicbanking.nl/article2.html>> 2/6/2012>.
2. Ali, J. (1978) Comprehensive History of Pre-Islam Arabs, Seventh Volume, Second Edition, Beirut: Dar-Al-Elm Lel-Malayeen. (In Arabic)
3. Bagheri, M. (2011) The Role of Company Law and Stock Exchange in Success of Privatization. First Edition, Tehran: Islamic Parliament Research Center. (In Persian)
4. Boroujerdi Abdo, M. (2001) Civil Law, First Edition, Tehran: Ganje Danesh. (In Persian)
5. Cizakca, M. (2004) Incorporated cash waqfs and mudaraba, Islamic non-bank financial instruments from the past to the future, MPRA Paper No. 25336, Available at: <<http://mpra.ub.uni-muenchen.de/25336>> 10/8/2012>.
6. Cizakca, M. (1996) A Comparative Evolution of Business Partnerships. Leiden: Brill.
7. Cizakca, M. (2010) Was Sharia Indeed the Culprit?, Kuala Lumpur: Iceif, MPRA Paper No. 22865, Available at: <<http://mpra.ub.uni-muenchen.de/id/eprint/22865>> 10/3/2013>.
8. EGamal, M.A. (2006) Islamic Finance: Law, Economics, and Practice, Cambridge: Cambridge University Press.
9. HArris, R. (2008) The Institutional Dynamics of Early Modern Eurasian Trade: The Corporation and the Commenda, Available at SSRN: <<http://ssrn.com/abstract=1294095> or <http://dx.doi.org/10.2139/ssrn.1294095>> 10/11/2012>.
10. Hoseini, S.M. (1999) A Short Socio-Economic History of Early Islam, First Edition, Qom, Islamic Development Organization. (In Persian)
11. Jaafari Langroudi, M.J. (1999) Contemplation and Promotion. First Edition, Tehran: Ganje Danesh. (In Persian)
12. Jaafari Langroudi, M.J. (2005) Muzaraba. First Edition, Tehran: Ganje Danesh. (In Persian)
13. Jaafari Langroudi, M.J. (2007) System-ology in Law Discipline. First Edition, Tehran: Ganje Danesh. (In Persian)
14. Jaafari Langroudi, M.J. (2009) Al-Fareq. Fifth Volume, Second Edition, Tehran: Ganje Danesh. (In Persian)
15. Jamshidnejad Avval, Gh. (2006) Economic Systems of Early Islam. First Edition, Tehran: Asatir Publication. (In Persian)
16. Katouzian, N. (2000) The Appearance of Legal Personality of Vaqf in Islam. pp. 253-261 in: A Step toward Justice, Second Volume, First Edition, Tehran: Tehran University Publication. (In Persian)
17. Katouzian, N. (2000) The Evolution of Vaqf Institution and its Future Perspective, pp. 309-333 in: A Step toward Justice, Second Volume, First Edition, Tehran: Tehran University Publication. (In Persian)
18. Katouzian, N. (2009) Specified Contracts, Second Volume, Partnerships-Settlement, Eighth Edition, Tehran: Ganje Danesh. (In Persian)
19. Kuran, T. (2011) The Long Divergence; How Islamic Law Held Back the Middle East. Princeton: Princeton.

20. Kuran, T. (Fall, 2005) The Absence of the Corporation in Islamic Law: Origins and Persistence. *The American Journal of Comparative Law*, Vol. 53, No. 4: 785-834.
21. Kuran, T. (Jun., 2003) The Islamic Commercial Crisis: Institutional Roots of Economic Underdevelopment in the Middle East. *The Journal of Economic History*, Vol. 63, No. 2: 414-446.
22. Maitland, F.W. (2003) *State, Trust and Corporation*. Edited by David Runciman and Magnus Ryan, Cambridge: Cambridge University Press.
23. MCusker, J. (Editor in Chief) (2006) *History of World Trade since 1450. Volume One*, London: Thomson Gale.
24. Mousavi Ardebili, A. (1994) *Jurisprudence of Partnership in Law and Sharia*. First Edition, Qom: Amir-Al-Momenin Library Publication. (In Arabic)
25. POstan, M.M. and Miller, E. (1987) *The Cambridge Economic History of Europe, Volume II, Trade and Industry in the Middle Ages*. Second Edition, Cambridge: Cambridge University Press.
26. Pryor, J.H. (Jan., 1977) The Origins of Commenda Contract. *Speculum*, Vol. 52, No. 1: 5-37.
27. Saffar, M.J. (2011) *Legal Personality*. First Edition, Tehran: Behnami Publication. (In Persian)
28. TRacy, J.D. (1990) *The of Merchant Empire Long-Distance Trade In The Early Modern World, 1350 1750*. Cambridge: Cambridge University Press.
29. Udovitch, A.L. (1962) At the Origins of the Western Commenda: Islam, Israel, Byzantium?, *Speculum*, Vol 37: 198-207.

Comparative analyzing of Islamic Republic of Iran's and United States of America's laws on state immunity with regards to the United States recent larceny of Iranian financial assets

Abbas Tadayoni¹

*Assistant Professor, Department of Law and Political Sciences,
Faculty of Shiraz University, Shiraz, Iran*

Seyed Mostafa Kazerooni^{2*}

*M.A. in International Law and The Lecturer of Shiraz Payam-e-Noor
University, Shiraz, Iran*

Received: 2016/05/08 – Accepted: 2016/10/07

Abstract

State immunity is considered to be one of the most important issues in contemporary International Law. Over time, this concept has been changed due to the evolution of International Law and during recent decades, the focus of academic forums and national and international courts has been attached to it. In the meantime, several states including the Islamic Republic of Iran and the U.S have approved state immunity laws in their domestic legislation and their legal exceptions. In this article, the authors seek to answer several questions including what the similarities and differences of Iranian and U.S. laws on state immunity are and secondly, how can the U.S. recent confiscation of Iranian financial assets (2 billion Dollars) can be justified. On the other hand, do contemporary International Law developments have had any effect on the Iranian and U.S. immunity laws. The Conclusion of the topic is that the main differences between U.S and Iranian state immunity laws are the differences in scope of protection of subjected persons, differences in source of legislation the possibility of confiscation of properties outside the country, The effect of executive branch presence in claims against foreign governments and finally the effect of foreign defendant State in the course of trial hearing. Also, U.S recent confiscation of Iranian financial assets has been contrary to its international obligations in accordance with the U.N. Charter, International customary law and the mutual Friendship Agreement.

Keywords: Islamic Republic of Iran's Courts jurisdiction over Civil Claims against Foreign Governments, State Immunity, U.S.A Foreign State Immunity Act (FSIA).

1. Email: tadayoni@shirazu.ac.ir

2. Corresponding Author, Email: mostafakazeroni@yahoo.com

References

1. Arnholz, J., Gainor, E. (2011) Offerings of Asset Backed Securities. Aspen Publishers Online.
2. Bankas, E.K. (2005) The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Courts. Springer Science & Business Media.
3. Begdeli, M.R. (2000) Immunity of States and Governmental Authorities from the Prospective of International Law. *Journal of Law and Politics*, Volume 4, pp 93-114.
4. Boas, G. (2012) *Public International Law: Contemporary Principles and Perspectives*, Edward Elgar Publishing.
5. Chamlongrasdr, D. (2007) *Foreign State Immunity and Arbitration*. Cameron May.
6. Chernick, R., Kolkey, D.M., Reeves Neal, B. (2012) *Practitioner's Handbook on International Arbitration and Mediation*. Third Edition, Juris Publishing, Inc.
7. Crawford, J. (2012) *Brownlie's Principles of Public International Law*. Oxford University Press.
8. Elsea, J.K. (2005) *Lawsuits Against State Supporters of Terrorism: An Overview*. CRS Report for Congress.
9. Elsea, J.K. (2013) *Samantar v. Yousef: The Foreign Sovereign Immunities Act (FSIA) and Foreign Officials*. Congressional Research Service. also available on: <http://fas.org/sgp/crs/misc/R41379.pdf>.
10. Fox, H., Webb, Ph. (2013) *The Law of State Immunity*. Oxford University Press.
11. Ghasemi Hamed, A., Khosrawi Farsani, A. and Aghababaie, F. (2014) Punitive Damages in Iran Law. *Journal of Judiciary Law*, Version 77, Volume 81, pp 161-187. (in Persian)
12. Goldsmith, J., Goodman, R. U.S. Civil Litigation and International Terrorism. http://www.law.harvard.edu/faculty/rgoodman/pdfs/US_Civil_Litigation_n_International_Terrorism.pdf.
13. Kadkhodaie, A.A., Daie, A. (Autumn 2011) State Immunity Deprivation of Iran in U.S Courts. *Journal of International Law*, Volume 43, pp 13-38. (in Persian)
14. Khazaie, H. (2006) The State and Independent International Organization Immunity against Arbitral Awards (The Interpretation of an Arbitral Award), *Journal of International Law*, Spring and Summer, Volume 34, pp 9-32. (in Persian)
15. Kim, J. (2004) Making State Sponsors of Terrorism Pay: A Separation of Powers Discourse Under the Foreign Sovereign Immunities Act. *Berkeley Journal of International Law*, Volume 22, Issue 3.
16. Kittrie, Orde F. (2016) *Lawfare: Law as a Weapon of War*. Oxford University Press.
17. Kloth, M. (2010) Immunities and the Right of Access to Court Under Article 6 of the European Convention on Human Rights. BRILL.
18. Murphy, Sean D. (2003) *United States Practice in International Law*; Volume 1, 1999–2001. Cambridge University Press.
19. Newton, M.A. (2010) *Terrorism: International Case Law Reporter 2008*, Volume 2. Oxford University Press.
20. Norton Moore, J. (2013) *Foreign Affairs Litigation in United States Courts*. Martinus Nijhoff Publishers.

-
21. O'Keefe, R., Ams, Ch.J. (2013) *The United Nations Convention on Jurisdictional Immunities of States and Their Property: A Commentary*. Oxford University Press.
 22. Sharifi Taraz Koohi, H. (2009) *Political and Cultural Trends in the Globalization Processes of Human Rights*, *The University of Tehran Law Quarterly, Circuit 39, Volume 4*, pp 277-295.
 23. Tabatabaie Nejad, S.M. (2015) *International Commercial Arbitration and The Challenge of Jus Cogens Application: Case Study (Arbitration in Competitiveness Law)*. *Comparative Law Studies Quarterly, Version 6, Number 1*, pp 277-300. (in Persian)
 24. Taghipour, B. (2014) *The Liability of Arbitrator in Iran Law and Some Countries*. *Comparative Law Studies Quarterly, Version 5, Number 1*, pp 57-85. (in Persian)
 25. Taheri, N. (2001) *Social Part: Law and Civil Rights (Islamic Republic of Iran Judiciary Authority to Meet the Civil Claims against Foreign States*. *Ferdowsi Magazine, Volume 2*, pp 11-12. (in Persian)
 26. U.S House of Representative Committee of Financial Services (2007) *The Need to Extend the Terrorism Risk Insurance Act: field hearing*. DIANE Publishing, March 5.
 27. U.S. Department of Homeland Security, Federal Emergency Management Agency (2013) *Insurance, Finance, and Regulation Primer for Terrorism Risk Management in Buildings*.
 28. Vital, D. (2001) *Global Politics: Essays in Honour of David Vital*. Psychology Press.
 29. Wuerth, I. (2011) *Foreign Official Immunity Determinations in U.S. Courts: The Case Against the State Department*. *Virginia Journal of International Law, Volume 51, Number 4*.

The comparison between supervisory bodies of human rights interpretations and international criminal courts judgments on provisional release

Alireza Taghipour*

*Assistant Professor, Faculty of Humanities, Bu-Ali Sina University,
Hamedan, Iran*

Received: 2015/09/21 – Accepted: 2016/05/01

Abstract

Nuremberg and Tokyo courts were the first international criminal courts were established by allies when there were no international regulations regarding the accused rights. But after World War II, effective steps were taken in this regard. At global and regional levels, a large number of documents have fully noted this matter and also measures such as the Human Rights Committee of the United Nations and the European Court of Human Rights have been predicted to be executed. The organs that played a significant role by interpreting the rights of the accused. Provisional Release is considered as one among these rights. After that in the late twentieth century and early twenty-first century, other courts were established at the international level. Now the question that arises in this context is whether these courts are required to follow the interpretations provided by the Human Rights Watch organization or not? Given that the rights of the accused do not differ in national courts and international criminal tribunals institutions, Human Rights Watch institutions throughout years have interpreted the provisions relating to the rights of the accused in their case law, Therefore, interpretations of the International Criminal courts judges can't be inconsistent also with the judicial procedures. However, the rules and the interpretations of the courts of the latter led to violation of the rights of the accused in provisional release. In the present article, the interpretations offered by human rights monitoring bodies have been investigated with the views of international criminal courts in this area.

Keywords: international criminal courts, international documents, provisional release, rights of accused, supervisory bodies of human rights.

* Email: arlaw2009@yahoo.com

References

1. Ashouri, M. (2003) Alternatives to prison or intermediary punishments. First publish, Tehran, Gerayesh publishing. (in Persian)
2. Bassiouni, M. Cherif With The Collaboration Of Alfred Dezayas (1994) The Protection Of Human Rights In The Administration Of Criminal Justice. A Compendium Of United Nations Norms And Standards, Transnational Publishers Inc.
3. Bourgon, S. (2003) Judgments, decisions and other relevant materials Issued by international courts and other international Bodies on human rights. Journal of International Criminal Justice, Vol. 1, pp. 245-256.
4. Elzeidy, M. (2006) Critical thoughts on Article 59(2) of the Icc statute. Journal of International Criminal Justice, Vol. 4, pp. 448-465.
5. Geert, Jan Alexander knoops (2005) Theory and practice of international and internationalized criminal proceedings. Kluwer Law International.
6. Gustafson, K. and Janisiewicz, N. (2008) Current Developments at the Ad hoc international criminal tribunals. Journal of International Criminal Justice, vol. 6, pp. 1091-1123.
7. Lazerges, Ch. (2003) Introduction à la politique criminelle. Translated By Ali Hossein Najafi Abrandabadi, First Edition, Tehran, Mizan Publishing. (in Persian)
8. Levin, L. (1998) Human Rights: Questions and Answers, Translated By Mohammad Jafar Pouyandeh, First Edition, Tehran, Ghatreh Publishing. (in Persian)
9. Mcintyre, G. (2003) Undue Delay And Provisional Release. In Gideon Boas And William A. Schabas(eds.), International Criminal Law Developments In The Case Law Of The Icty, Martinus Nijhoff Publishers, pp. 216-238.
10. Mcintyre, G. (2003) Right to be informed of the case Alleged– challenging the lawfulness of Arrest. in Gideon Boas and William A. Schabas (eds.), International Criminal Law Developments In The Case Law Of The Icty. Martinus Nijhoff Publishers, pp.202-216.
11. Mcintyre, G. (2003) Equality of Arms - Defining Human Rights in the jurisprudence of the international criminal tribunal for The former Yugoslavia. Leiden Journal of International Law, vol. 16, pp.269-320.
12. Mose, E. (2003) Impact of Human Rights conventions on the two ad hoc tribunals. in Morten Bergsmo (ed.), Human Rights and criminal justice, Martinus Nijhoff Publishers, pp.179-208.
13. Schabas, W.A. (2001) An Introduction To The International Criminal Court. Cambridge University Press.
14. Tavernier, P. (2003) Comment Surmonter les Obstacles Constitutionnels à la Ratification du Statut de Rome de la Cour Pénale Internationale. Translated By Morteza Kalantarian, Law Journal, No.29, pp. 149-168. (in Persian)
15. Tracol, X. (2004) The Precedent of Appeal chambers Decisions in the international criminal tribunals. Leiden Journal of International Law, Vol. 17, pp.67-102.
16. von Glahn, G. (1999) *An Introduction to Public International Law*. First Volume, Translated By Davoud Aghaee with the cooperation of Mohammad Hossein Hafezian. First Edition, Mizan Publishing. (in Persian)
17. Zappala, S. (2002) Rights of Persons During An Investigation. In Antonio Cassese , Paola Gaeta And John R.W.D.Jones (eds.), The Rome Statute Of The International Criminal Court: A Commentary, Vol. II., Oxford University Press, pp.1181-1203.
18. Ziaee Bigdeli, M.R. (2001) Public international Law. Fifth Edition, Ganje Danesh Publishing. (in Persian).

Comparative study of the nature of celebrities' image rights in commercial advertisements

Feizollah Jafari^{1*}

Assistant Professor, Department of Law, Bu-Ali Sina University, Hamadan, Iran

Mehrnaz Mokhtari²

Master Student of Private Law, Bu-Ali Sina University, Hamadan, Iran

Received: 2016/04/09 – Accepted: 2016/06/14

Abstract

Nowadays, images of celebrities are used to advertise goods and services, and this phenomenon is growing. On the one hand, in recent years, celebrities become aware of the value of image and image rights in the advertisement world. On the other hand, many agencies and owners of goods and services become aware of the important effect of popularity of celebrities as a tool to boost sales of goods. Therefore, in today's world, celebrities' image rights become a valuable asset. There is not a uniform procedure among legal systems in respect of the nature of celebrities' image rights. The legal system of the United States has recognized the economic value of image by accepting it as a right of publicity and has considered it as an economic right. In the European countries and in France, the said issue still remains in the framework of right of personality while in legal system of England, image rights is described within the right of privacy. By considering the differences in this field, this paper seeks to explain the adopted approaches in legal systems, and analyze the nature of image rights in Iran.

Keywords: commercial advertisement, image rights, right of personality, right of privacy, right of publicity.

1. Corresponding Author, Email: jafarilaw@yahoo.com

2. Email: mehnaz.mokhtari20@gmail.com

References

1. Adrian, A. (2013) Image is Everything: The New Image Right of Guernsey. Available at: www.icondia.com/wp-content/uploads/2014/04/Image-is-Everything.pdf.
2. Adrian, A. (2014) Trade Mark Dilution, Right of Publicity, Image Rights: A Comparative Analysis of Japanese, Australian, UK and US Law. Institute of Intellectual Property Bulletin (IIP Bulletin), Vol. 23, pp. 1-44.
3. Badini, H. (2012), Civil Liability Arising From Breach of Moral Rights Related to the Personality and Human Rights. Law Quarterly, Faculty of Law and Political Science, Tehran university, Vol. 42, No. 1, pp. 97-100. (in Persian)
4. Balcarczyk, J. (2010), Sport image rights - a comparative overview. Zbornik radova Pravnog fakulteta u Splitu, Vol. 47, No. 2, pp. 327-334.
5. Barnett, S.R. (1999) The Right to One's Own Image: Publicity and Privacy Rights in the United States and Spain. American Journal of Comparative Law, Vol. 47, pp. 555-582.
6. Budhiraja, G. (2011) Publicity Rights Of celebrities: An Analysis under the Intellectual Property Regime. Nalsar Student Law Review, Vol. 7, No. 6, pp. 85-108.
7. Caenegem, W.V. (1990) Different approaches to the protection of celebrities against unauthorized use of their image in advertising in Australia, the United States and the Federal Republic of Germany. European Intellectual Property Review, Vol. 12, No. 12, pp. 452-458.
8. Cloete, R. (2012) The taxation of image rights: A comparative analysis. De Jure, Pretoria University Law Press, Vol. 45(3), pp. 556-567.
9. Drake, Ph. (2007) Who Owns Celebrity?: Privacy, Publicity and the Legal Regulation of Celebrity Images. in: Sean Redmond and Su Holmes (eds.), Stardom and Celebrity: A Reader, SAGE Publications Ltd.
10. Halpern, Sh.W. (2003) Book Review: The Commercial Appropriation of Personality (by Huw Beverley, Smith, Cambridge University Press, 2002), Duke Journal Of Comparative & International Law, Vol. 13, pp. 381-388.
11. Hekmatnia, M., Khoshnevis, A. (2009), The Examples of Intellectual Property Rights in Sport Industry. Islamic Law Review, No. 23, pp. 127-158. (in Persian)
12. Jafarzadeh, M.Gh (2006) Legal Foundation of Legitimacy of Intellectual Rights. Journal of Theology and Law, No. 19, pp. 61-95. (in Persian)
13. Jennings, J.S. (2003) The Right Of Publicity And Cyberspace. ABA Intellectual Property Law Section's 18th Annual Intellectual Property Law Conference in Washington D.C.
14. Johnmark, D.R. (2014) Celebrity Advertising and the Performance of New Products in Globacom Nigeria Limited. Interdisciplinary Journal of Contemporary Research In Business, Vol. 6, No. 4, pp. 1-18.
15. Korotkin, L. (2013) Finding Reality in the Right of Publicity. Cardozo Law Review Denovo, Cardozo School of Law, New York City, pp. 268-313.
16. Kwall, R. (1994) The Right of Publicity vs. the First Amendment: A Property and Liability Rule Analysis. Indian Law Journal, Vol. 70, Issue 1, pp. 47-118.
17. Logeais, E., Schroeder, J.B. (1998) The French Right of Image: An Ambiguous Concept Protecting the Human Persona. Loyola of Los Angeles Entertainment Law Review, Vol. 18, No. 3, pp. 511-542.

18. Mosazadeh, E., Mostafazade, F. (2013) The Look at the Concept and Foundations of Right on Privacy in Common Law System. Quarterly Journal of Public Law Surveys, No. 2, pp. 45-67. (in Persian)
19. Masson, S.T. (2010) The Presidential Right of Publicity. Boston College Intellectual Property & Technology Forum, pp.1-9.
20. Moskalenko, K. (2015) The right of publicity in the USA, the EU, and Ukraine. International Comparative Jurisprudence, Volume 1, Issue 2, pp. 113-120.
21. Mullick, S., Narnaulia, S. (2008) Protecting Celebrity Rights Through Intellectual Property Conceptions. NUJS Law Review, Vol. 1, No. 4, pp. 615-635.
22. Pareek, A., Majumdar, A. (2006) Protection of Celebrity Rights- The Problems and the Solutions. Journal of Intellectual Property Rights, Vol. 11, No. 6, pp. 415-423.
23. Pina, C. (2014) The Role of IP for Athletes and Image Rights. p. 3; Available at:
24. http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=291665.
25. Rahmdel, M. (2005) Right of Mankind on Privacy. Journal of Law and Political Science, No. 70, pp. 119-145. (in Persian)
26. Reichman, J.D. (2012) Right of Publicity in 17 Jurisdictions Worldwide. Published by Getting the Deal Through, pp.1-12.
27. Richard, S.R. (1998) Preemption, the Right of Publicity, and a New Federal Statute. Cardozo Arts and Entertainment Law Journal, Vol. 16, pp. 183-207.
28. Rooney, S.M. (2013) Just another Brown-Eyed Girl: Toward A Limited Federal Right Of Publicity Under The Lanham Act In a Digital Age Of Celebrity Dominance. Southern California Law Review, Vol. 86, No. 4, pp. 24-43.
29. Ruane, K.A. (2014) Freedom of Speech and Press: Exceptions to the First Amendment. University of North Texas Digital Library, Congressional Research Service, pp. 1-35; Available at: <http://digital.library.unt.edu/ark:/67531/metadc462149/>. (Last Accessed April 3, 2016)
30. Savare, M. (2013) Image is Everything: A Comparative Examination of Publicity Rights in the US and Western Europe. Intellectual Property magazine, pp. 52-54.
31. Schoeneberger, M. (2013) Unnecessary Roughness: Reconciling Hart and Keller with a Fair Use Standard Befitting the Right of Publicity. e-Journal of Science & Technology, Vol. 8, Issue 5, pp.1875-1918.
32. Stapleton, L.L., McMurphy, M. (1999) The Professional Athlete's Right of Publicity. Marquette Sports Law Review, Volume 10, Issue 1, pp. 23-68.
33. Synodinou, T. (2014) Image Right and Copyright Law in Europe: Divergences and Convergences. Laws, Vol. 3, No. 2, pp. 181-207.
34. Tugendhat, M. (2003) Exploitation of Image Rights in the UK. Available at:
35. fbis.eu/wp-content/uploads/2013/03/2002-Exploitation-of-Image-Rights-in-the-UK-by-Michael-Tugendhat-QC.pdf.
36. Tushnet, R. (2015) A Mask that Eats into the Face: Images and the Right of Publicity. Columbia Journal of Law & the Arts, Vol. 38, pp. 1-47.
37. Vick, K.L. and Jassy, J.P (2011) Why a Federal Right of Publicity Statute Is Necessary. Communications Lawyer, Vol. 28, Issue 2, pp.14-22.
38. http://unitedkingdom.taylorwessing.com/uploads/tx_siruplawyermanagement/IP_HittingBack.en.pdf (visited at: 3/31/2016- 95/1/12)
39. www.intellectualpropertymagazine.com. (visited at: 3/31/2016- 95/1/12)
40. http://unitedkingdom.taylorwessing.com/uploads/tx_siruplawyermanagement/IP_HittingBack.en.pdf (visited at: 3/31/2016- 95/1/12)

Adducibility to cultural norms in sentencing; Comparative study in judicial system of Iran, USA and Germany

Seyed Hosein Hoseini¹

*Assistant Professor, Department of Law, Ferdowsi University of
Mashhad, Mashhad, Iran*

Hamidreza Danesh Nari^{2*}

*Ph.D. Candidate in Criminal Law and Criminology, Shahid Beheshti
University, Tehran, Iran*

Received: 2016/05/10 – Accepted: 2016/06/30

Abstract

Adducibility to cultural norms is created, when criminalization system and cultural norms are in opposite. According to this approach, when an act is criminalized and it is advised according to some special cultural norms, adducing of defendant to cultural norms in different steps of criminal process, creates a concept which is called Adducibility to Cultural Norms. This research by using qualitative models and case study method, tries to evaluate the role of Adducibility to Cultural Norms in sentencing in judicial systems of Iran, USA and Germany. Findings of this research show that in Iranian penal system, Adducibility to cultural norms is not used in *hadd* and *qesas* punishments. While it is usable for *ta'ziri* offences. The current approach of the German legal system with accepting of Adducibility to Cultural Norms, has limited it. In the US criminal justice system, extreme attention to cultural norms has caused its acceptance in criminal process stages. While the studied legal systems are representative of three legal system (Islam, Common law and Roman-German), Adducibility to Cultural Norms usually a cause for minimum punishment. It should be noted that in the Iranian legal system, it is adduced to *ta'zirat* offences.

Keywords: adducibility to cultural norms, cultural norms, multiculturalism, sentencing.

1. Email: shosseini@ferdowsi.um.ac.ir

2. Corresponding Author, Email: hdanesh90@yahoo.com

References

1. Ardebili, M. (2013) Public criminal law. 35th edition, Mizan, Tehran. (in Persian)
2. Ameli, H. (1979) Alqavayed and Alfarayed. Vol 2, First Edition, Hakim. (in Arabic)
3. Agence France Presse (11 April 2005) Neun Jahre Haft für Ehrenmord in Esslingen. Gericht Bleibt Knapp Unter Höchststrafe. www.123recht.net/article.asp?a=12657&p=1.
4. Böhmecke, M. (2005) Studie: Ehrenmord. Tübingen, Terre des Femmes.
5. Bundestagsfraktion Bündnis 90/Die Grünen, Menschenrechtsverletzungen im Namen der Ehre. Dokumentation des Öffentlichen Fachgesprächs vom 13. April 2005 (Berlin, Bundestagsfraktion Bündnis 90/Die Grünen, 2005), www.gruene-bundestag.de/cms/publikationen/dokbin/89/89963.
6. Bushway, Sh. and Morrison Piehl, A. (2007) The Inextricable Link Between Age and Criminal History in sentencing. *Crime and Delinquency Journal*, 53, pp 156- 183.
7. Boots, Denise Paquette, John K. Cochran, Kathleen M. Heide (2003) Capital punishment preferences for special offender populations. *Journal of Criminal Justice*, Vol 31 , Issue 6, pp. 553-565.
8. Danesh Nari, H. (2013). Multiculturalism approach to judicial interpretation of criminal laws. M.A. thesis in criminal law and criminology, Tarbiat Modares University. (in Persian)
9. Dhami, M. (2005) From Discretion to Disagreement: Explaining Disparities in Judges' Pretrial Decisions. *Behavioral Sciences and the Law* (23, 3), pp. 367-386.
10. Fleiner ,Th. et al. (2013) Constitutional Democracy in a Multicultural and Globalised World. Second published, Springer Publishing.
11. Greenwalt, K. (2013) The Cultural Defense: Reflections in Light of the Model Penal Code and the Religious Freedom Restoration Act. *Ohio State Journal of Criminal Law*, Vol 6, pp. 299- 321.
12. Golduzian, I. (2004) Doctrines of public criminal law. Mizan, Tehran. (in Persian)
13. Hostettler, J. (2013) The criminal Jury old and now. Second published, Waterside Press.
14. Kymlicka, W. (2014) Multiculturalism: success, failure and future. Queen University, second published.
15. Louis, C. (Köln, Nov/ Dec 2004) Kampf der Tödlichen Ehre' in *Emma* www.emma.de/561.html.
16. Louis, C. (2009) The cultural defense, challenging the mono cultural paradigm. 2090291_CULDIV.book.
17. Maier, S. (2009). Honor killings and the cultural defense in Germany, in multicultural jurisprudence. Edited by Marie-Clarie Foblets and Alison Rentlen, Hart publishing.
18. Mahmudi Janaki, F. (2009) Sentencing System: Goals And Necessities, In new discourses of criminal law. firs edition, Mizan, Tehran, pp. 667- 688. (in Persian)
19. Mehra, N. (2010) Sentencing guidelines in England and wales. *Law Journal of Tehran University*, No. 40, Vol 3, pp. 335- 353. (in Persian)
20. Nurbaha, R. (2010) Public criminal law. 22th edition, Ganj Danesh, Tehran. (in Persian)
21. Rentlen, A. (2009) The use and abuse of cultural defense, in multicultural jurisprudence. edited by marie-clarie foblets and Alison rentlen, Hart publishing.
22. Salimi, R. (2012) Demographics. Astan qods pub, Mashhad. (in Persian)

-
23. Song, S. (2007) *Justice, gender and the politics of multiculturalism*. Cambridge University Press.
 24. United States Sentencing Commission Guidelines Manual (2012).
 25. United Nations General Assembly, Working Towards the Elimination of Crimes Against Women Committed in the Name of Honor, Report of the Secretary-General, UN GAOR 57th Session, UN Doc A/57/169 (2002).
frauenrechte.de/tdf/pdf/EU-Studie_Ehrenmord
 26. Von Bullion, C, 'In den Fängen einer Türkischen Familie', *Süddeutsche Zeitung, München*, www.sueddeutsche.de/tt4m2/ausland/artikel/506/48458/.

Comparative study between primary Jihad in Islamic law and Responsibility to protect in international law

Sohrab Salahi*

Assistant Professor, Department of Law, University of Imam Hossein, Tehran, Iran

Received: 2016/01/18 – Accepted: 2016/08/29

Abstract

It is clear that the establishment and continuity of the International Public Order depends on observance of the fundamental principles and norms of the International Society. Peaceful coexistence and relations and rejection of war and violence are the most important and most significant of these basic principles. At the same time, efforts of various nations under the rule of tyrants to liberation, has found nature domestic, many of the armed conflicts which works naturally seek international as well as have many questions and attracted the attention of many lawyers and efforts have been made to the doctrine of “responsibility to protect” to be answered; In this study, we sought to answer the question that is whether the Jihad in the Shiite is compatible with the responsibility to protect doctrine in International Law. In this comparative study, we briefly review the rules governing the prohibition on the use of force and also explain the concept of primary jihad and the responsibility to protect. The authors have concluded that despite the differences in structure and territory, from the theoretical and philosophical and since, one of the most important application of the primary jihad is to liberate the nations that are under tyranny and dictatorship, dignity, honor, life and property exposed to over run their domination, so with the responsibility to protect doctrine is applicable

Keywords: the doctrine of responsibility to protect, non-use of force, Primary Jihad, the right to self- determination.

* Email: Salahi.sohrab@gmail.com

References

1. Al-qartebi, A.Y. (1986) Al-Kafi Laban Barakat. Scientific books. (in Arabic)
2. Al-sarakhsi, A. (1986) Al-mabsout. Vol. 10, Beirut, Dar Al-marefah. (in Arabic)
3. Al-tousi, A.M. (1984) Al-nahayah fi Mojarad Al-Fiqh Al-fetae. Beirut, Dar al-andalus. (in Arabic)
4. Al-tousi, A.M. (1983) Ten letters. Qom, Association of Teachers. (in Arabic)
5. Barzenouni, M.A. (2005) Islam; Originality War and Originality Peace. Journal of International Law, No. 33, pp. 73-157. (in Persian)
6. Bowett, D. (1972) Reprisals Involving Recourse to Armed Force. The American Journal of International Law, Vol. 66, pp.1-36.
7. Carlo, Fo. (2008) The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine. Journal of Conflict & Security Law, Vol. 13, No. 2, pp. 191-213.
8. Cassese, A. (1997) The role of force in international relations. Translated by Moretaz Kalantarian, Vol. 1, Tehran, Agah Publications. (in Persian)
9. Cassese, A. (2008), International Criminal Law. Translated by Hosein Piran et al., Vol. 1, Tehran, Jungle Publications. (in Persian)
10. Farsi, J. (1976) International Islamic law. First edition, Tehran, Jahan Ara Publications. (in Persian)
11. Firhi, D. (2008) The concept of war and military ethics in Shiite Islam, Journal of Politics. Faculty of Law and Political Science at Tehran University, Volume 38, Issue 1, pp. 131-159. (in Persian)
12. Glennon, M.J. (2003) The Fog of Law: Self-defence, Inherence, and Incoherence in Article 51 of the United Nations Charter. Harvard Journal of Law and Public Policy, Vol. 22, pp. 539-558.
13. Golpaigani, S.M. (no date) Guidance. Qom, Dar Al-Quran Al-karim. (in Arabic)
14. Gross, E. (2001) Thwarting Terrorist Acts by Attacking the Perpetrator or their Commanders as an Act of Self-Defence: Human Rights Versus the State's Duty to Protect Its Citizens. Temple International and Comparative Law Journal, Vol. 15, pp.195-246.
15. Hadi, H.M. (2006) Military intervention on humanitarian in Islam and international law. Journal of rights discourse, No. 11-10, pp. 107-81. (in Persian)
16. Hashemi, S.A.H. (2010) Is there any Islamic basis for humanitarian intervention? International Law Journal, Journal of International Legal Affairs presidency, pp. 127-154. (in Persian)
17. Helli, H. Y. (1996) Tazkirah Al-fuqaha. Vol. 9, Qom, Al Al-beit Institution. (in Arabic)
18. Helli, H.Y. (1996) Mokhtalef Al-Shia, Vol. 4, Qom, Center of Islamic Publications. (in Arabic)
19. Holy Quran
20. Javid, M.J., Mohammadi, A. (2013) The Relationship of the Principle of Non-Intervention in the Contemporary International Law and the Principle of Support of the Oppressed in the Islamic Law. Shiraz University Journal of legal studies, No. 1 (5), pp. 49-88. (in Persian)
21. Karami, J. (1996) The Security Council of the United Nations and humanitarian intervention. Tehran, First edition, Foreign Ministry Institute Press. (in Persian)

22. Kelsen, H. (1948) Collective Security and Collective Self-defence under the Charter of the United Nations. *The American Journal of International Law*, Vol. 42, pp. 783-796.
23. Khamenei, S.A. (1994) Answers of questions. Vol. 1, Center of Publications. (in Arabic)
24. Khoei, A. (1989) *Menhaj Al-Salehin*. Vo. 1, Qom, Madinah Elm. (in Arabic)
25. Kunz, J.J. (1947) Individual and Collective Self-defence in Article 51 of the Charter of the United Nations. *The American Journal of International Law*, Vol. 41, pp.872-879.
26. Lyons Gene, M. (1994) International intervention , state sovereignty and humanitarian intervention in the future. Translated by Khojasteh Arefnia, *Political and Economic Information*, 8th, No. 83 & 84, pp. 4-12. (in Persian)
27. Qavam, A., Ravanbod A. (2010) The concept of responsibility to protect; evaluation of the role of the West - NAM norm in the formation of the world. *Journal of strategy*, No. 55, pp. 171-187. (in Persian)
28. Malekizadeh, A.H. (2005) Study of the concept of allowed defense in the light of the International Court of Justice in the case of oil platforms. MA thesis, Faculty of Law, Shahid Beheshti University of Tehran. (in Persian)
29. McDougal, Feliciano (1961) *Law and Minimum World Public Order: The Legal Regulation of International Coercion*. Yale University Press.
30. Mirzaei Yengejeh, S. (1994) *The evolution of the United Nations*, Tehran. Institute for Political and International Studies. (in Persian)
31. Momen Qomi, M. (1994) *Statements of new issues*. Qom, Center of Islamic Publications of association of teachers. (in Arabic)
32. Morzhen, J. (1998) International intervention humanitarian. *Journal of International Law.*, No. 22, pp. 168-167.
33. Mousavi, S.F., Hatami, M. (2007) Humanitarian intervention; violation of the third rule or the exception. *Law Journal of Tehran University*, No. 1, pp. 159-189. (in Persian)
34. Mousavi Khomeini, S.R. (no date) *Tahrir Al-vasilah*. Vol. 1, Scientific books. (in Arabic)
35. Mousavi Khomeini, S.R. (1990) Authority of supreme leader from the book "Sale". Tehran, Islamic Culture Publications. (in Arabic)
36. Najafi, M.H. (1995) *Gems of speech*. Vol. 21, Tehran, Center of Islamic books. (in Arabic)
37. Nowrat, K., Schbaker, E.W. (1998), *The Use of Force to Restore Democracy Inrer national Legal Implication of the ECOWAS International in Siera leone*. *American University International law Review*. Vol. 14, No. 2, pp. 312-412.
38. Orford, A. (2011) *International Authority and the Responsibility to Protect*. Cambridge: Cambridge University Press.
39. Rashidinejad, Z. (2007), *Rules and limits of Humanitarian Intervention in Security Council Practice*. *Journal of International Law*, No. 37, pp. 63-102. (in Persian)
40. Rohani, S.M.S. (1992) *Fiqh Al-Sadiq*. Vol. 13, Qom, Center of books. (in Arabic)
41. Safi Golpaigani, A. (1997) *Al-dalah Ela Man Lah Al-velayah*. Qom, School of Islamic Thoughts. (in Arabic)
42. Salahi, S. (2016) *The occupation of Iraq; strategic objectives and legal citations*. No 5, Tehran: Mizan Publications. (in Persian)

-
43. Sani (Martyr), Sheikh Zein Al-din Ali Ibn Ahmad Ameli Jiei, (1989) *Rawda Al-bahiah*. Qom, Davari Publications. (in Arabic)
 44. Shafiei, M. (1996) Investigating the legitimacy of humanitarian military intervention from the perspective of international law. *Journal of International Law*, No. 20, pp. 63-102. (in Persian)
 45. Simma, B. (1999) NATO, The UN and the Use of Force: Legal Aspects. *European Journal of International Law*, 10(1), 1, pp.1-23.
 46. Siyah Rostami, H. (2009) The rights of Military occupation and its efficacy in protecting people with special attention to Iraq. MA thesis, Islamic Azad University, Science and Research Branch, Tehran, Iran. (in Persian)
 47. Stahn, C. (2007) Jus ad bellum, jus in bello, jus. Post bellum, Rethinking the Conception of the Law if Armed Force. *EJIL*, Vol. 17, No. 5, pp.921-943.
 48. Tabrizi, M.J. (1997) *Merat Al-nejah*. Vol. 3, Qom, Barqozideh Publications. (in Arabic)
 49. Waldock, C. (1952) The Regulation of the Use of Force by Individual States in International Law. *Recueil Des Cours*, Vol. 2.
 50. Wilde, R. (2003), The Skewed Responsibility Narrative of the 'Failed States' Concept. *ILSA Journal of International and Comparative Law*, 9(2), pp.451-517.
 51. Ziyaei Bigdeli, M. (2015), *Islam and International Law*. Tehran: Library of Ganje Danesh. (in Persian)

Civil liability for false advertisement

Morteza Adel^{1*}

Assistant Professor, Department of Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran

Mohsen Shamsollahi²

Ph.D. Student of Private Law, University of Judicial Sciences and Administrative Services, Tehran, Iran

Received: 2016/04/24 – Accepted: 2016/09/21

Abstract

Today, advertisement is an important part of all businesses. the use of false information in these advertisements is always targeting consumers and rival traders. No doubt in these circumstances consumers need to be protected, however, it is not clear what kind of support and protection can be afforded for consumers and how they can be compensated? Can they terminate the contract, or they have to keep the goods and claim for compensation due to civil liability of the supplier? On the other hand, it is not clear what the liability of the media for propagating false advertisements is and how consumers can make claims against the producer of false advertisement and what compensations are available to the consumers from them? False advertisements may also be used against rival businesses as competing traders and make them lose their market. Here also the question is whether the rival trader has the right to claim compensation from people benefiting from the false advertisement for their losses?

Keywords: business rivals, civil liability, compensation, competition law, consumer protection, false advertisement.

1. Corresponding Autho, Email: madel@ut.ac.ir

2. Email: m.shamsollahi@alumni.ut.ac.ir

References

1. Aqajani, Z. (2011) *The Right of Substitution and Restitution in Iranian Law with an Emphasis on Consumer Rights*. Tehran, Institute of Commercial Studies and Researches
2. Baez, B. (2010) *Tort Law in the USA*. New York, Kluwer Law International.
3. Bevier, L. (1992) Competitor Suits for False Advertising under Section 43(a) of the Lanham Act: A Puzzle in the Law of Deception. *Virginia Law Review*, Vol. 78, No. 1, Symposium on the Law and Economics of Intellectual Property, 1-48.
4. Callmann, R. (1948) False Advertising as a Competitive Tort. *Columbia Law Review*, Vol. 48, No. 6, 876-888.
5. Cils, C.F. (2014) *International Consumer Protection*. 2nd Edition, N.Y., Juris Pub.
6. Darke, P., Ritchie, R. (2007). The Defensive Consumer: Advertising Deception, Defensive Processing, and Distrust. *Journal of Marketing Research*, Vol. 44, No. 1, 114-127.
7. Emanuel, S., Emanuel, L. (2009) *Torts*. New York, Aspen Publishers.
8. Ghaffari Farsani, B. (2014) *Competition Law and its Civil Sanctions*. Tehran, Mizan Pub.
9. Ghasem Zadeh, M. (2008) *Principles of Civil Liability*. Tehran, Mizan Pub.
10. Handler, M. (1929) False and Misleading Advertising. *The Yale Law Journal*, Vol. 39, No. 1, pp. 22-51.
11. Horvitz, M.P., Ferren, A. (2014) Don't Be Pinocchio: Avoid Liability for False Advertising. Retrieved 3 27, 2015, from <http://www.retailawadvisor.com/2014/04/02/dont-be-pinocchio-avoid-liability-for-false-advertising/>
12. Huston, J. (2015) *Liability for Commercial Speech: A Guide to False Advertising, Commercial Disparagement, and Related Claims*. Foley Hoag LLP, USA.
13. Irinescu, L. (2014) The Misleading and Comparative Advertising: Effects and Perspectives. *Journal of Public Administration, Finance and Law*, pp. 201-205.
14. Ismaili, M. (2007) *Commercial Advertisement: Effects, Legal Status and Legislators Imperatives*. Tehran, Iran Parliament's Research Centre.
15. Jafaritarbar, H. (2010) *Civil Liability of Goods*. Tehran, Dadgostar Pub.
16. Jordan, E., Rubin, P. (1979) An Economic Analysis of the Law of False Advertising. *The Journal of Legal Studies*, Vol. 8, No. 3, pp. 527-553.
17. Katoozian, N. (2008) *General Rules of Contracts: Dissolution of Contract*. Volume 5, Tehran, Sahami Enteshar Company Pub.
18. Katoozian, N (2010) *Civil Liability for Product Defects*. Tehran, Tehran University Press.
19. Katoozian, N. (2010) *Civil Liability*. Volume 1, Tehran, Tehran University Press.
20. Khorsandian, M.A., Chitsaz, F., (1394) The Bases of Advertisements Liability. *Journal of Private Law Studies*, Volume 45, No. 2, pp. 185-165.
21. Marx, G.S. (1983) Section 43(A) of The Lanham Act: A Statutory Cause of Action for False Advertising. *Wash & LeeL Rev.*, Volume 40, pp. 384-422.
22. Moein, M. (2007) *Persian Dictionary*. Vol. 1, Tehran, Amir Kabir Publications.
23. Montaqemy, F.M. (2010) An Introduction to Business Ethics and Advertising in e-commerce from the perspective of protecting the rights of consumers. *Journal of Business Studies*, No. 40, pp. 40-21.

24. Nelson, P. (1974) Advertising as Information. *Journal of Political Economy*, Vol. 82, No. 4, pp. 729-754.
25. Omid, M., Saadatmandi, A. (1995) A Review of Consumers' Rights. Tehran, Iran Budget and Planning Publication.
26. Oswald, L. (2011). *The Law of Marketing*. Cengage Learning.
27. Richards, J., Preston, I. (1992) Proving and Disproving Materiality of Deceptive Advertising Claims. *Journal of Public Policy & Marketing*, Vol. 11, No. 2, pp. 45-56.
28. Rossini, C. (1998). *English As a Legal Language*. Kluwer Law International.
29. Rotfel, H. (1992) Power and Limitations of Media Clearance Practices and Advertising Self-Regulation. *Journal of Public Policy & Marketing*, Vol. 11, No. 1, 87-95.
30. Russo, J., Metcalf, B., Stephens, D. (1981) Identifying Misleading Advertising. *Business Administration Faculty Publications and Presentations*, 119-131.
31. Safai, S.H. (2006) *General Principles of Contracts*. Tehran, Mizan Pub.
32. Safai, S.H., Rahimi, H. (2010) *Civil Liability Law*, Tehran, Samt Pub.
33. Taflinger, R.F. (1996) A Definition of Advertising. Retrieved 24/3/2015 from <http://public.wsu.edu/~taflinge/addefine.html>.

Comparative study and implementation of electronic monitoring in Iran and America criminal law

Fazlullah Foroughi^{1*}

*Assistant Professor, Faculty of Law and Political Science, University
of Shiraz, Shiraz, Iran*

Amir Irani²

*Ph.D. Student of Criminal Law and Criminology, Faculty of Law and
Political Science, University of Shiraz, Shiraz, Iran*

Received: 2016/02/13 - Accepted: 2016/06/19

Abstract

With the adoption of the new Islamic Penal Code, the electronic monitoring entered the Iranian criminal justice system, while in the system of other countries, it has an older history. Comprising more than five decades of history in America and adopted in thirty different countries. In the new Islamic Penal Code, implementation of electronic surveillance, as many of these institutions are subject to a code of conduct. It should be based primarily on the implementation of the conceptual framework, its implementation and the purpose of its range, also according to the number of prisoners sentenced to electronic monitoring at the specified time. After that component that must be on the run to be an important issue in this work is the component that is based on the type of crime, the characteristics of the offender and criminal proceedings are drawn. In addition, identifying the tools needed to implement these institutions is another important performance issue. These considerations along with an analysis of the legal system of Iran and America. This hypothesis is explored in some implementation details,. So we attempt to shape the institutional frameworks aand thereby provide background for the development of executive regulations, in order to not only achieve the targets of electronic surveillance, but also to prevent the abandoning of this institution after a short time.

Keywords: crimes lightweight, electronic monitoring, low-risk offenders, monitoring before and after the trial, tracking devices.

1. Corresponding Author, Email: Foroughi@shirazu.ac.ir

2. Email: Irani_amir@yahoo.com

References

1. Alavi, A. (2009) Alternative social penalties of imprisonment. *Correctional Journal*, Vol. VII, No. 85. (in Persian)
2. Albrecht, H. (2008) Sanction policies and alternative measures to incarceration: European experiences with intermediate and alternative criminal penalties. 142nd International Training Course Visiting Experts' Papers.
3. Albrecht, H. (2014) Lectures economic sanctions (Scientific Meeting of Law, University of Guilan). Collector Mohammad Rezvani, December. (in Persian)
4. Aqayy Janetmakan, H. (2014), Supervision (prison) Electronic; a new method jail in succession. in: *Encyclopedia of Criminal Sciences (Proceedings of criminal Science)*, the second book, first edition, Tehran: amount. (in Persian)
5. Ashoury, M. (2003) Alternatives to imprisonment or punishment intermediate. first edition, Tehran: Gerayesh publication. (in Persian)
6. Ashoury, M. (2014), *Criminal Justice 2*. first edition, Tehran: Justice Publication. (in Persian)
7. Black, M., Smith, R.G. (2003) Electronic monitoring in the criminal justice system. *Australian Institute of Criminology, Trends & Issues in Crime and Criminal Justice*, No. 254, Canberra.
8. Bales, W., Mann, K., Blomberg, T., Gaes, G., Barrick, K., Dhungana, K., McManus, B. (2010) A quantitative and qualitative assessment of electronic monitoring. Report submitted to the Office of Justice Program National Institute of Justice U.S. Department of justice. The Florida State University College of Criminology and Criminal Justice Center for Criminology and Public Policy Research.
9. Bruinsma, G., Weisburd, D. (Eds) (2014). *Encyclopedia of Criminology and Criminal Justice*. Springer Science Business Media, New York.
10. Burrell, W.D., Gable, R.S. (2008) From B. F. Skinner to Spiderman to Martha Stewart: The past, present and future of electronic monitoring of offender. *Probation Parole 46 (Current Issues)*, pp. 101–118.
11. Ehsanpour, R. (2008), Electronic monitoring. *Correcting and training magazine*, No. 79 and 80.
12. Ghadery Yandi Kond, A. (2014) Comparing the electronic control freedom depriving punishments performance and outcomes. M.A Thesis, University of Kashan. (in Persian)
13. Hajitabar Firouzjaji, H. (2007) Alternatives to imprisonment in Iran Criminal Law. First edition, Tehran: Ferdowsi publication. (in Persian)
14. Khaqany, M. (Winter 2012) The feasibility of restorative convergence of electronic surveillance penalty criminal policy with the teachings of Islam. *Journal of Communication*, No. 1. (in Persian)
15. Khalqy, A. (2014) Note on the Code of Criminal Procedure. Fourth edition, Tehran: Knowledge city publication. (in Persian)
16. Lero Jonson, Ch. (2010) The Impact of Imprisonment on Reoffending: A Meta-Analysis. A dissertation submitted to the Division of Research and Advanced Studies of the University of Cincinnati.
17. Marklund, F., Holmberg, S. (2009) Effects of early release from prison using electronic tagging in Sweden. *Journal of Experimental Criminology*, 5: 41-61.

18. Mortimer, E., May, Ch. (1999). Electronic monitoring in practice: the second year of the trials of curfew orders. London: Home Office 1997. For a summary see Haferkamp, R.: Elektronisch überwachter Hausarrest - Europa und die Schweiz. Neue Kriminalpolitik.
19. Mayer, M., Haverkamp, R., Levy, R. (eds.) (2003) Will Electronic Monitoring Have a Future in Europe? Freiburg.
20. Mosadeq, M. (2015) Code of Criminal Procedure, fourth edition. Tehran: the forest. (in Persian)
21. Nellis, M., Beyens, K., Kaminski, D. (2013) Electronically monitored punishment. International and critical perspectives. Routledge, London/New York.
22. Pinto, S., Nellis, M. (2011) 7th European electronic monitoring conference survey of electronic monitoring: analysis of questionnaires. http://www.cepprobation.org/uploaded_files/EM2011_Conference_Analysis-of_EM_Questionnaires.Pdf.
23. Rhimi, Z. (2013) Therapeutic approach Penal Code in 1392. M.A thesis of Criminal Law and Criminology, University of Shiraz, September. (in Persian)
24. Randy, R. Gainey, Brian K. Payne (2000). Understanding the experience of house arrest with electronic monitoring: An analysis of quantitative and qualitative data. International Journal of Offender Therapy and Comparative Criminology, 44.
25. Renzema, M., Mayo-Wilson, E. (2005) Can electronic monitoring reduce crime for moderate to high-risk offenders? J Exp Criminol, 1(2): 215–237.
26. Renzema, M. (2003). Electronic Monitoring's Impact on Reoffending, Revised March 24, 2003. Retrieved 20 August, 2004, from <http://www.campbellcollaboration.org/doc-pdf/elecmon.pdf>.
27. Report submitted to the Committee on Legal Affairs and Human Rights of the Council of Europe on the Situation of European Prisons and Pre-Trial Detention Centres published in 2004.
28. Schmidt, A.K. (1998) Electronic monitoring: what does the literature tell us. Fed Probat, 62(2), pp. 10-19.
29. Shamloo, B., Clean Intentions, M. (2015) Differential criminal policy in the light of the positive paradigm and challenges in dealing with new approaches. Comparative Law Studies, Vol 6, Number 1, Spring and Summer. (in Persian)
30. Yeh, S. Stuart (2015) The Electronic Monitoring Paradigm: A Proposal for Transforming Criminal Justice in the USA, *Laws*, ISSN 2075-471X www.mdpi.com/journal/laws.
31. Tadyon, A. (Fall 2008) Electronic monitoring: a step towards replacing the prison. The Justice Law Journal, New Era, No. 64. (in Persian)

A comparative study of the substantive provisions of trademarks with an emphasis on color and three-dimensional marks

Alireza Fasihizadeh¹

Assistant Professor, Department of Law, Faculty of Economy and Administrative Sciences, University of Isfahan, Isfahan, Iran

Ehsan Momeni Tezerji^{2*}

Ph.D. Student of Private Law, University of Isfahan, Isfahan, Iran

Mohammad Baqerpoor³

Ph.D. Student of Private Law, University of Shahid Beheshti, Tehran, Iran

Received: 2015/8/21 – Accepted: 2016/5/7

Abstract

To be considered a trademark, symbols and emblems must be missing some situations (negative substantive conditions) and have some conditions (Positive substantive conditions). Non-traditional marks, especially those which are visible such as colors and three-dimensional marks face challenges In order to comply with these conditions. Some declare that such mark are not registerable as they strictly believe trademarks limited to the traditional marks such as letters and numbers and images and they emphasize that non-traditional visual symbols are neither able to meet some essential requirements nor- due to their specific nature- are acceptable as a trademark because of the limited grounds. In contrast, some believe that not only can the symptoms coordinate with the terms of traditional trademark, but also the need to promote such innovation requires support of these signs. In line with the second opinion, it seems that examples of trademarks are only a way to distinguish the origin of goods and persons aand are not limited to traditional marks.

Keywords: distinction, the functional theory, the theory of scarcity, three-dimensional and color marks.

1. Email: fasihizadeh@gmail.com

2. Corresponding Author, Email: Emomeni198@gmail.com

3. Email: mohammad5921@yahoo.com

References

1. Adachi, M. (2009) A Lost Decade of 3D Trademark Registration in Japan: Coca-Cola Bottle 3D TM Case. Japanese Trade ASS'N 3, - http://www.jpta.jp/pdf/committee/005/AIPLA2009/2009_CocaCola_Bottle_3D_TM_case.pdf.
2. Badini, H., Hoseinzadeh, M., Mohebi fard, S. (2014) The theory of fair use (Classic) in the descriptive trade marks, Irainian Journal of Trade Studies, No. 73. (in Persian)
3. C-104/01 Libertel Groep BV v Benelux-Merkenbureau [2003] ECR I-03793-para67.
4. C-104/01 Libertel Groep BV v Benelux-Merkenbureau [2003] ECR I-03793-para 12-24.
5. C-48/09 P, Lego Juris A/S v. OHIM, 2010 E.C.R. at ¶ 9 (EUR-Lex).
6. C-49/02 Heidelberger Bauchemie GmbH [2004] ECR I-06129-p60.
7. C-49/02 Heidelberger Bauchemie GmbH [2004] ECR I-06129-paras 10-11-14-42.
8. Council Regulation (EC) No 40/94¹ of 20 December 1993 on the Community trade mark.
9. e. Compton, Amanda (2010) Acquiring a Flavor for Trademarks: There's No Common Taste in the World, Northwestern Journal of Technology and Intellectual Property, Volume 8, Number 3, pp340-359.
10. Fleck, L. (2003) What Makes Sense in One Country May Not in Another A Survey of Select Jurisdictions on Scent Mark Registrability & A Critique of Scents as Trade-marks. LL.B. Candidate, Faculty of Law, Queen's University.
11. Hammersley, F. (1998) The Smell of Success: Trade Dress Protection for Scent Marks. *arquette intellectual property law review*, 2 *Intellectual Property L. Rev.* 105, pp 105-155.
12. <http://www.people.com.cn/zixun/flfgk/item/dwjff/falv/7/7-3-01.html>. (visited 2014/05/01)
13. <http://www.people.com.cn/zixun/flfgk/item/dwjff/falv/7/7-3-01.html>. (visited 2014/05/13)
14. <http://www.people.com.cn/zixun/flfgk/item/dwjff/falv/7/7-3-01.html>. (visited 2014/06/12)
15. <http://www.uspto.gov/trademarks/basics/index.jsp>. (visited 2014/06/12)
16. <http://www.wipo.int/wipolex/en/details.jsp?id=6957>. (visited 2014/04/08)
17. <http://www.wipo.int/wipolex/en/details.jsp?id=6957>(visited 2014/07/02)
18. Jackson, G.L. (2008) Through the looking hole of the multi-sensory trademark rainbow: trademark protection of color per se across jurisdictions: the United States, Spain and the European Union. *Richmond Journal of Global Law and Business*, pp. 91-109.
19. Jeremy, Ph. (2006) *Trade Marks at the Limit*. Edward Elgar.
20. Karapapa, S. (2010) Registering Scents as Community Trade Marks, *The Law Journal of the International Trademark Association*, Vol. 100, No. 6, pp. 1335-1359.
21. Kexin, L. (2012) Where Is the Right Balance?—Exploring the Current regulations on Nontraditional Three-Dimensional Trademark Registration in the United States, The European Union, Japan And China, *Li_Macro*, Vol. 30, No. 2, pp 428-475.

22. Kur, A. (2009) Too pretty to protect? Trade mark law and the enigma of aesthetic functionality. Max Planck Institute for Intellectual Property and Competition Law, Research Paper, No. 11-16.
23. Kudrjavceva, J. (2012) Issues surrounding registration of colour trade marks, RGS� Research Papers, No 9.
24. Maria Cristina, C. (2003), Questions relating to abstract colour trade marks: recent developments in Germany, E.I.P.R. European Intellectual Property Review.
25. McCarthy, J. Thomas (1984) Trademarks and unfair competition. Vol. 8, No. 1.
26. Mirhosieni, H. (2012) Trademark law, Legal foundation of Mizan, 1th edition. (in Persian).
27. Momeni Tezerji, E. (2015) Protection of Nontraditional Marks in trademark law. A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Intellectual Property Law, The University of Qom Faculty of Law. (in Persian)
28. Oratz, L. (1996) User Interfaces: Copyright vs. Trade Dress Protection. computer Law.
29. Palladino, V. (2002) Assessing trademark significance: genericness, secondary meaning and surveys. Official Journal of the International Trademark Association, Vol. 92, No. 4, pp. 857-889.
30. Port, K. (2010) On Nontraditional Trademarks, Legal Studies Research Paper Series Working Paper, No.05.
31. Qualitex Co. v. Jacobson Products Co. Inc. 514 U.S. 159, 115 S.Ct. 1300, 131 L.Ed.2d 248, 63 USLW 4227, 34 U.S.P.Q.2d 1161, U.S. Cal. March 28, 1995 (No 93-1577).
32. Qualitex Co.v. Jacobson Prods. Co-514 U.S. 159, 173-74; 34 U.S.P.Q. 2d (BNA)1161, 1167(1995)
33. Reimer Erin, M. (2013) A Semiotic Analysis: Developing a New Standard for Scent Marks. Vanderbilt J. of -Ent. and Tech. Law, Vol. 14:3:693, pp. 693-728.
34. Salehi, J., Momeni Tezerji, E. (2016) Olfactory trademarks: a new manifestation in the legal protection of trademarks, private law. No.12. (in Persian)
35. Shamsi, A. (2003) On trademarks and industrial property rights, the organization for researching composing university textbooks in the humanities, 1th edition, (in Persian)
36. Shilling, D. (2002), Essentials of Trademarks and Unfair Competition, Wiley.
37. Shohyoho [Trademark Act], Law No. 127 of 1959, art. 4 (Japan).
38. Shreman, B., Bently, L. (2004), Intellectual Property law. 2nd edition, Oxford University Press.
39. U.S. Patent & Trademark Office November 25, 2013, 15 U.S.C. § 1052(e)(5).
40. Vaseli, R. (2000) Analysis of the provisions relating to trade marks rights in Iran, PhD -thesis in Private Law. (in Persian)
41. Wal-Mart Stores, Inc. v. Samara Bros. 529 U.S. 205, 212 (2000).
42. Wongt, M. (1998) The aesthetic functionality doctrine and the law of trade-dress protection. Cornell Law Review, Vol. 83:1116, pp. 1117-1165.

Protection of business methods in comparative law (A study on the approach of American, Indian, Japanese, *Imamia* jurisprudence and Iranian legal systems and the TRIPS agreement)

Seyyed Mohammad Hadi Ghabooli Dorafshan^{1*}

Assistant Professor, Ferdowsi University of Mashad, Mashad, Iran

Mostafa Bakhtiarvand²

Assistant Professor, University of Qom, Qom, Iran

Akram Aghamohammadi³

*M.A. Graduate, Intellectual Property Law, University of Qom, Qom,
Iran*

Received: 2016/08/01 – Accepted: 2016/10/18

Abstract

Business methods are among the most important assets of companies, whose protection is different in different legal systems. Although trade secrets are the most traditional form to protect business methods, the companies' willingness to patent inventions in this field has so increased that recognizing them as inventions has become a controversial issue. This paper, with descriptive-analytic method, has studied the possibility of business methods protection in deferent legal systems and concluded that countries such as the United States, India and Japan, have, despite their previous practice, showed much tendency towards protection of business methods as inventions; the position of TRIPS in granting patent rights to inventions including inventive steps and industrial applicability is also favorable to business methods protection. In Iran, business methods are been excluded from the scope of protection. Therefore, considering the deep foundations of *Imamia* jurisprudence in protecting people's material and immaterial rights, it is necessary for the legislator to add an article to protect business methods or remove its exclusion, at least, with regard to applicable electronic commerce methods. Finally, if business methods are not protectable in the form of trade secrets or patents, recourse can be made to other forms such as utility models.

Keywords: business methods, patent, trade secrets, utility models.

1. Corresponding author, Email: h.ghaboli@um.ac.ir

2. Email: m.bakhtiarvand@qom.ac.ir

3. Email: aghamohammadi671@gmail.com

References

1. Abhimanyu, Gh. (2006) Business Method Patents: The Road Ahead. *Journal of Intellectual Property Rights (JIPR)*, Vol.11, pp. 175-184.
2. Akhond Khorasani, M.M.K. (1985) *Hashia Almakaseb*. Teharan, Islamic Guidance Ministry, 1st Ed. (in Arabic)
3. Allama Helli, Hassan bin Yousef bin Motahar Asadi, (1989) *Nehaya Alihkam fi Marefat Alahkam*. Qom, Ismaelian Institution. (in Arabic)
4. Allison, J.R., Hunter, S.D. (2006) On the feasibility of improving patent quality one technology at a time, the business methods. *21 Berkeley Tech. L. J.*, pp. 750-814.
5. Anon, Business Method Patents, at; <http://www.nolo.com/legal-encyclopedia/business-method-patents-30098.html>, last visited at: 2016/8/4.
6. Ansari, M. (1994) *Almakaseb*, Qom, World Congres in Honor of Sheikh Ansari. (in Arabic)
7. Ansari, M., Taheri, M.A. (2005) *Collection of Law Encyclopedia (Private law Encyclopedia)*. Vol. 3, Tehran, Mehrabe Fekr Publication, 1st Ed. (in Persian)
8. Araki, MA. (1994) *Ketab Albai*, Ismaelian Institution. (in Arabic)
9. Barooah, S.P. (2013) Guest Post: Why are Business Method Patents being granted?", AT: <http://spicyip.com/2013/01/guest-post-why-are-business-method.html>> 2016/5/4.
10. Benjamin's Sale of Goods (1997) 5th ed., London, Sweet & Maxwell.
11. Black's Law Dictionary (1990) 6th ed., London· West Publishing Co.
12. Campbell, D., Center for International Legal Studies(CILS) (2011) *Legal aspect of doing business in Asia*. 2nd ed, Juris Publishing, Inc.
13. Conley, J.M. (2003) *The International Law of Business Method Patents*. 88 *ECO. REV.* 15, pp.15-33.
14. Cambridge Dictionary "Meaning of "start-up" in the English Dictionary", available at: <http://dictionary.cambridge.org/dictionary/english/start-up><2/5/2016.
15. Dreyfuss, R.C. (2000) Are business method patents bad for business? *Public Law and Legal Theory Working Paper Series New York University School of Law*, Forthcoming in *Santa Clara Computer and High Technology Law Journal*, Vol. 16(2), pp. 1-17.
16. Duffy, J.F. (2011) Why business method patents? Month 20xx] *Desktop Publishg Example*, pp. 100-132.
17. Edita Petnycyte (2004) Should Patent Protection be Extended to Business Methods? *1 International Journal of Baltic Law* 3, pp. 114-134.
18. European IPR Helpdesk (2013) *Commercialising intellectual property: Licence Agreements*.
19. Furutani H. (2003) Patentability of Business Method Inventions and Inventions with Non-technical Features in Japan versus the US and Europe. *Japanese Patent Attorney*, pp.1-40.
20. Ghabooli Dorafshan, S.M.H. (2007) *The Concept of Sale and its Distinction from other Contracts in Iranian law with a Comparative Study in English Law*, Tehran. Shelak Publications. (in Persian)
21. Gygax, A.F., Asjeet, L., Jinteo, H. (2008) *The Effects of business Method patents on Grantees and There Industry Rivals*. pp.1-20.

22. Habiba, S., Shah Babay, H.R. (Autumn 2012) Protection of Utility Models Establishment as a Way to Complimenting Patent System. *Comparative Law Researches Quarterly*, 16th, Vol, No. 3, pp. 51-74. (in Persian)
23. Halabi, A.S., Taghi Bin Najm Aldin (1982) *Alkafi felfegh*, Isfahan, Amir Al Momenin, Library. (in Arabic)
24. Hall, B., Graham, S., Harhoff, D., Mowery, D. (2003) Prospects for Improving U.S. Patent Quality via Post-grant Opposition. Working Paper 9731, NBER., pp.1-26.
25. Hall, B.H. (2003) *Business Method Patents, Innovation, and Policy*. Department of Economics, University of California, Berkeley, pp.1-28.
26. Hosseini Rouhani, S.M.S. (1997) *Menhaj Alfeghaha*, Qom, Alelmia Publications, 4th Ed. (in Arabic)
27. Hunt, R.M. (2009) *Business Method Patent and U.S Financial Services*. Federal Reserve Bank of Philadelphia, No. 07-21. pp.1-30.
28. Hunter, Starling David III, (2003) Have Business Method Patents Gotten a Bum Rap? Some Empirical Evidence. MIT Sloan Working Paper No. 4326-03, 2, pp.1-42.
29. Ibne Hamze, Mohammad Bin Ali (1987) *Alvasila Ela Nail Alfazila*, Qom, S. Marashi Library. (in Arabic)
30. Intellexip IP Advocate, *Computer Software & Business Method Patents in*, (2016). at: <http://www.intellexip.com/Article-4-Computer-Software>> 2016/5/6.
31. Isfahani, Sh.M.H., Hashia Almakaseb, (1997) *Qom, Dar Al Mostafa Le Ehya Altoras*, 1st Ed. (in Arabic)
32. Investopedia (2016) What is startup. available at: Investopedia, "What is startup", available at: <http://www.investopedia.com/terms/s/startup.asp><10/5/2016.
33. Jarvenpaa, S.L., Tiller, E.H. (2006) Protecting internet buisness methods: Amazon.com and the 1-click checkout. Center for business technology and law university of Texas at Austin, pp.1-10.
34. Jinghui, N. (2010) *Recent Developments in Business Method Patents in the U.S. and the Implication to the People's Republic of China: A Comparative Perspective* [unpublished dissertation].
35. Joseph, S.J.P.T. (2015), *E-Commerce, Fifth Edition: An Indian Perspective*, PHI Learning Pvt. Ltd.
36. Katouzian, Nasser, *civil law (Specific Contracts (1))*, (1999), Tehran, Sahamie Enteshar Publications, 7th Ed. (in Persian)
37. Khalkhali, S.M.K. (1974) *Fegh al Imamia (Ghesm al Moamalat)*. Tehran, Al Haidari Publications, 1st Ed. (in Arabic)
38. Khoie, S.A. (1989) *Menhaj Alsalehin*. Qom, MADina Alelm. (in Arabic)
39. Khoie, S.A. (1991) *Mesbah Ahfeghaha*. Beirut, Darhadi. (in Arabic)
40. Khomeini, S.M. (1997) *Ketab Albai*. Tehran, The Institute for Compilation and Publication of Imam Khomeini's Works. (in Arabic)
41. Khomeini, S.R.A. (2000) *Ketab Albai*. Tehran, The Institute for Compilation and Publication of Imam Khomeini's Works. (in Arabic)
42. Kohji Yoshioka (2000) *Summary of Patentability of Business Systems in Japan, in Patenting the New Business Model: Building Fences in Cyberspace*.
43. Makarem Shirazi, N., Anvar Alfeghaha (*Ketab Albai*), (1992) Qom: Alimam Amiramomenin Institution, 2th Ed. (in Arabic)
44. Mehta, M.H., Moskowitz, L. (2004) *Business Method Patents in the United States: A Judicial History & Prosecution Practice*> 2016/9/4.

-
45. Merges, R. (1999) As Many as Six Impossible Patents Before Breakfast: Property Rights for Business Concepts and Patent System Reform. *Berkeley Technology Law Journal* 14, pp. 577-615.
 46. Mohaghegh Damad, S.M. et al. (2000), *Contract Law in Imamia Jurisprudence*, Tehran. Organization for Study and Complication of Universities' Humanities Books (SAMT), 1st Ed. (in Persian)
 47. Mohseni, S., Ghabooli Dorafshan, S.M.M. (2014) *Literary and Artistic Law (Comparative Study of Iranian, French and Egyptian Laws*. Mashad, Islamic Researches and Humanities Institution, 1th Ed. (in Persian)
 48. Motahari, M. (2002) *A Look at the Islamic Economic System*. Tehran, Sadra Publications, 11th Ed. (in Persian)
 49. Nari Lee (2005) Patent eligible subject matter reconfiguration and the emergence of proprietary norms – the patent eligibility of business methods. 45 *IDEA*, pp. 320-351.
 50. Oxford Living Dictionaries Definition of *method*. available at: <https://en.oxforddictionaries.com/definition/method> 10/5/2016
 51. Prasad, R. (N.D) Business Method Patents in India– Or is that a contradiction in terms? ALG India Law Offices.
 52. Practicing Law Institute *Business Method Patents*, *Patent Bsr Review*, available at: <http://www.ipwatchdog.com/patent/business-method-patents>>14/6/2016.
 53. Ranjan Narula Associate (2012) *India- Business methods and Software Patents*. pp. 1-15.
 54. Sfekas, J.S. (2007) Controlling business method patent: how the japanese stand dard for patenting software could bring reasonable limitation to business method patents in the united states. *Pacific Rim Law & Policy Journal*, Vol. 16 No. 1, pp. 197-226.
 55. Shariat Isfahani, Fath Allah bin Mohammad Javad (1977) *Resala fi Tahghigh Mana Albai*, Qom, Dar al Ketab. (in Arabic)
 56. Singsangob, A. (2009) A comparative study of the united states, japan, and thailand laws on online business method patents. *IIP Bulletin*, pp.86-91.
 57. Smith, N.A. (2002) Business method patents and their limits: justifications, history, and the emergence of a claimconstruction jurisprudence. 9 *Mich. Telecomm. Tech. L. Rev.*, 171-208.
 58. Spulber, D.F. (2011) Should business method inventions be patentable. *Journal of Legal Analysis* Forthcoming, pp. 1-75.
 59. Taketa, J. (2002) The future of business method software patents in the intellectual property system. 75 *S. CAL. L. REV.*, pp.943-982.
 60. Terterov, M., Reuvid, J. (2005) *Doing business with estonia*, GMB Publishing Ltd.
 61. Tousi, Abou Jafar Mohammad bin Hassan (1966) *Almabsout fi Fegh Alimamia*, Tehran:Almaktaba Alrazavia le Ihya Alasar Aljafaria. (in Arabic)
 62. Triano, N.P. (2003) Intellectual property, insurance and business method patents. *External forces & Industry knowledge*, pp. 1-4.
 63. USOTO Data Processing: Financial, Business Practice, Management, or Cost/ Price Determination", Class 705: available at: <http://www.uspto.gov/web/patents/classification/uspc705/defs705.html>> 14/4/2016.
 64. Verbauwhede, L. (2004) Intellectual property issues in advertising, consultant. SMEs Division, WIPO, pp.1-14.

-
65. Walts, Suzanne C., Sauer, W. (2012) Recent development regarding business method patents. Intellectual Property Section, Virginia Law, Vol. 61, pp. 28-31.
 66. WIPO (2003b) Industrial applicability and utility requirements and differences. Geneva.
 67. WIPO (2003a) Most intermediate training course on practical intellectual property issues in business in cooperation with the ministry of science and technology of the people's republic of china, patentability of computer software and business methods. Geneva.
 68. Wright, B.C. (2000) Internet and e-commerce patent, ABA, Intellectual Property Law Section's Spring/Cle program on e-commerce and internet patents. pp. 1-3.
 69. Zohaili, V. (1988) *Alfegh Alislami va Adelatoh (Alnazariat alfeghia va aloghoud)*. Beirut, Dar al Fekr, 3rd Ed. (in Arabic)

Nature of construction guarantees and recording manner and conditions of call of guarantees in Iran Law and FIDIC Contracts

Abbas Kazemi Najafabadi¹

Assistant Professor, Faculty of Law, Allameh Tabatabaai University, Tehran, Iran

Zahra Bayat^{2*}

LLM in Private Law, Allameh Tabatabaai University, Tehran, Iran

Received: 2016/01/18 – Accepted: 2016/07/18

Abstract

To insure the implementation of contractual obligations, guarantees is obtained from promisor in contracts. With reference to the general conditions of guarantees, nature and recording of these guarantees have not been stipulated in civil law and FIDIC contracts. In civil law and on the analysis of the substantive guarantees, predominant views presented are: contract guarantee, umbrella clause, article 10 of civil code and collateral guarantee. The most appropriate view is collateral guarantee that offers a comprehensive analysis of all guarantees. This guarantee is real and personal. Most common among guarantees in FIDIC contracts is type of personal security, too, that is almost similar with personal collateral guarantee in civil law. Recording of guarantee is the most important problem but because of ambiguity in the nature of guarantee, the frequency difference is made between contractor and employer. A conditional guarantee create obligations of an accessory nature, where the liability of the guarantor arises upon an established default by the contractor and under on-demand guarantee do not stipulate any condition for payment and when contractor after the on-demand guarantee unfairly has been called, the only remedy available to him would be to pursue the matter in litigation.

Keywords: collateral, FIDIC, guarantee, nature, recording.

1. Email: Abaskazemi@gmail.com

2. Corresponding Author, Email: Bayat.hoghogh@gmail.com

References

1. Afaki, G. (2008) Uniform Rules for Demand Guarantees Interpretation Guide. Translated by: Farideh Tazhibi, Tehran: Jangle publication. (in Persian)
2. Beale, H. (1980) Remedies for Breach of Contract. London: Sweet and Maxwell publishing.
3. Bradgate, R., White, F. (2009) Commercial Law. Legal Practice Course Guides, 2th edition, New York: Oxford University Press.
4. Bunni, N.G. (2005) The FIDIC forms of contract. Third edition, Oxford: Blackwell publishing.
5. Emami, H. (2009) Civil Law. volume II, 21th edition, Tehran: Eslamieh publication. (in Persian)
6. Farshad Far, M. (2011) Contract Formation Guide to EPC Manner in Development Projects. 2th edition, Tehran: Nou Avar publication. (in Persian)
7. FIDIC (1999) Conditions of Contract for EPC/Turnkey Projects, first edition, Geneva, Switzerland: FIDIC publishing.
8. The FIDIC Contracts Guide (2000) Condition of Contract for Construction, Plant and Design-Build, EPC/Turnkey Projects, first edition, Geneva, Switzerland: FIDIC publishing.
9. Garner, B.A. (2004) Black's Law Dictionary. 8th Edition, United States: Thomson Business Publishing.
10. Ghamami, M. (1999) Performance Guarantee. Journal of Faculty of Law and Political Sciences, Tehran University, No. 43, pp. 77-101. (in Persian)
11. Ghavami, B. (2002) Authorities and Obligations of Employer and Contractor in Governmental Construction Contracts. Master Thesis in Private Law, Faculty of Law, Shahid Beheshti University. (in Persian)
12. Hadavand, M. (2012-2013) Training Pleading of Law of Administrative Contracts, Faculty of Law, Islamic Azad University Tehran Central. (in Persian)
13. Jaeger, A.V., Hok, G.S. (2010) FIDIC a Guide for practitioners. Heidelberg Dordrecht London New York: Springer publishing.
14. Jafari Langroudi, M. (1991) Civil Law. Mortgage-Peace, 2th edition, Tehran: Ganjeh Danesh publication. (in Persian)
15. Judge, S. (2006) Law for Business Students. First edition, Palgrave Macmillan publishing, New York.
16. Karimi, A. (1997) Mortgage Religion. Journal of Faculty of Law and Political Sciences, Tehran University, Course 38, pp. 19-42. (in Persian)
17. Kashani, M. (1995-1996) Bank Guarantee. Journal of Law Research Magazine, No. 16, 17, pp. 137-190. (in Persian)
18. Kashani, M. (2009) Specific Contracts. First edition, Tehran: Mizan publication. (in Persian)
19. Katozian, N. (1997) General Principles of Contracts. volume four, 2th edition, Tehran: Publication Company. (in Persian)
20. Katozian, N. (1995) General Theory of Obligations. First edition, Yalda Institute publication. (in Persian)
21. Katozian, N. (2009) Proof and Reason of Proof. Volume I, 6th Edition, Tehran: Mizan publication. (in Persian)
22. Katozian, N. (2009) Property and Ownership. 28th edition, Tehran: Mizan publication. (in Persian)

23. Katozian, N. (2009) *Specific Contracts*. Volume 4, 6th edition, Tehran: Publication Company. (in Persian)
24. Koksai, Jur. T. (July 2011) FIDIC Conditions of Contract as A Model for an International Construction Contract. *International Journal of Humanities and Social Science*, Vol. 1, No. 8, pp. 140-157.
25. Langrich, R. (2008) *Letters of Credits in International Commerce Law*. Translated by: Saeed Hasani, Tehran: Mizan publication. (in Persian)
26. *Legal Guide on Drawing up International Contracts for the Construction of Industrial Works (1988)* Prepared by: the United Nations Commission on International Trade Law (UNCITRAL) United Nations, New York.
27. Madani, J. (1998), *Civil Procedure*, Volume II, First Edition, Tehran: Paydar Publication. (in Persian)
28. Mafi, H., Mohsenzadeh, A. (2015) Comparison of the Commercial and Standby Letters of Credits. *Journal of Comparative Law Review*, Vol. 6, No. 1, pp. 301-323. (in Persian)
29. Mohaghegh Damad, M. (2002) *Practical Principles and Conflict of Evidence*. 2th edition, Tehran: Publishing Center of Islamic Sciences. (in Persian)
30. Mohamadi, A. (1997) *Description Warcraft*. Vol. 4, 4th edition, Qom, Darolfekr publication. (in Persian)
31. Mosavi Bojnourdi, M. (2006) *Guarantee Contract*. First edition, Tehran: Majd publication. (in Persian)
32. Murdoch, J., Hughes, W. (2000) *Construction Contracts - Law and Management*. 3rd edition, London: Spon Press.
33. Nicholas, B. (1980) *French Law of Contract*. London: Butterworths Publishing.
34. *Obligation Code of Switzerland (1999)* Translated by: Javad Vahedi, First edition, Tehran: Mizan publication. (in Persian)
35. Safaii, H. (1970) Commitment to Performance of Contract, (Guarantee). *Journal of Faculty of Law and Political Sciences, Tehran University*, No. 2, pp. 51-61. (in Persian)
36. Safaii, H., Olfat, N. (2010) Specific Performance of Obligation and its Priority to the Right to Termination of Contract. *Journal of Mofid*, No. 79, pp. 43-62. (in Persian)
37. Shahidi, M. (2007) *Effects of Contracts and Obligations*. 3th edition, Tehran: Majd publication. (in Persian)
38. Shahidi, M. (2002) *Principles of Contracts and Obligations*. 2th edition, Tehran: Majd publication. (in Persian)
39. Shams, A. (2011) *Civil Procedure (Advance Course)*, Vol. II, 20th edition, Tehran: Derak publication. (in Persian)
40. Shiravi, A. (2010) *International Commerce Law*. First edition, Tehran: Samt publication. (in Persian)
41. Sifri, J. (2008) *Standby Letter of Credit. A Comprehensive Guide*, First Edition, New York: Publishing Palgrave Macmillan.
42. Seminar: Bonds, Guarantees and Other Undertakings in English Law, November 2005- available at: www.keatingchambers.Co.uk/resources/publications/2005/ct-ip-bonds-guarantees.aspx.> Last visited: 2015/10/20.

Inequality of bargaining power as a basis for control of contract

Sakineh Karami*

*Assistant Professor, Faculty of Humanities, Islamic Azad University,
West Tehran Branch, Iran*

Received: 2015/11/11 – Accepted: 2016/08/15

Abstract

Deep economic and social developments in two recent centuries created important changes in contracting arena among them placing weak and strong parties against each other in contracts. Freedom of contract, could not provide contractual justice in this new conditions. Therefore adjustment of this tool in a manner that can serve to the justice felt necessary. In foreign law, primarily courts became pioneers in this way and used interpretation technics and general principles of contracts to protect the weak party. But overall legislative interventions felt necessary. Then legislators limited principle of freedom of contract in various areas in order to protect the weak party and for the benefit of contractual justice. Legislative control, in recent 50 years, concentrated on the protection of consumers. In Iranian law, despite minimal tools being available, there is not any evidence of judicial control of unequal contracts. Although legislative control is done, *inter alia* in consumer contracts but its protection is incomplete because of not being sensitive about unfair terms.

Keywords: contractual justice, freedom of contract, inequality of bargaining power, judicial control, legislative control.

1. Email :skarami.poopa@gmail.com

References

1. Abdipur, E. (2009) Abusing From Dominant Economic Situation. *Islamic Law Journal*, Vol. 6, No. 21, pp.125-155.
2. Abedian, M.H. (2007) Unfair Contract Terms. *Comparative Civil law Course Note* , PhD. Course, Mofid University, pp.125-155.
3. Alsharif, M.H.(2007) Formalism in Judicial Reasoning a Research About The Relation Between Judicial Analogy And Formal Analogy. *Law Quarterly Journal of Law And Political Science Faculty*, Vol. 57, No. 2, pp.1-39.
4. Amiri Ghaemmaghami, A.(1999) *The Law of Obligations*. Vol. 1, Mizan Publications.
5. Andrew, A., Burrows, S., McKendrick, E., Edelman, J. (2007) *Cases and Materials on the Law of Restitution*. Oxford University Press.
6. Angelo, A.H., Pellingier, E. (1992) Unconscionable Contracts :A Compparative Study of The Approaches in England France , Germany and the United States. *Loyola of Los Angeles International and Comparative Law Review*, 7-1, pp. 455-506.
7. Atiyah, P.H. (1995) *An Introduction to The Law of Contract*. Oxford, Clarendon Press.
8. Barnhizer, Daniel D. (2004) Inequality of Bargaining Power. *MSU Legal Studies Research Paper Series*, No. 02-01, pp. 1-105.
9. Barnhizer, D.D. (2005) Bargaining Power in Contract Theory. *Michigan State University College of Law, MSU Legal Studies Research Paper Series*, Research Paper, No. 03-04, pp. 1-62.
10. Hugh, B. (2012) *Chitty on Contracts*, 31st edition, Vol. 1 & 2, Sweet & Maxwell, No. 7-048.
11. Chio Albert and Triantis George (2012) *Bargaining Power and Contract Design*. Columbia Law School, pp. 1-57.
12. Collins, H. (2003) *The law of Contract*. Cambridge University Press.
13. Craswell, R. (1994) *Freedom of Contract*. *Chicago Working Paper in Law and Economics*, pp. 1-23.
14. Dimmateo, L.A. (1999) Equity's Modification of Contract:an Analysis of the Twentieth Century's Equitable Reformation of Contract Law. *33 New Eng. L. Rev.*, pp. 265-375.
15. Eezanlu, M. (2011) *Contractual Terms which Limiting And Excluding Liability*. Second Edition.
16. Guest, A.G. (1984) *Anson,s Law of Contract*. 26th ed., Clarendom Press, Oxford.
17. Harris Donald, T.D. (1989) *Contract Law Today: Anglo-French Comparisons*. Clarendon Press.
18. Jafarie Langroodi, M.J. (1994) *Law Terminology*. Sixth Edition ,Ganje Danesh Publications.
19. Karimi, A. (2002) Imposed Terms in Viewpoint of General Rules of Contracts. *Legal Researches Journal*, No. 1, pp. 75-83.
20. Kenny, M.D., James- Fox, Lorna O'Mahony (2010) *Unconscionability in European Private Financial Transactions: Protecting the Vulnerable*. Cambridge University Press.
21. Kimel, D. (2001) *Neutrality, Autonomy and Freedom of Contract*. *Oxford Journal of Legal studies*, Vol. 21, pp. 473-494.

22. Koffman, L., Macdonald, E. (2004) *Law Of contract*. Fifth edition .
23. Kotz, H., Flessner, A. (1992) *European Contract Law*. Vo.1 ,TR. by Tony Weir, Clarendon Press, Oxford .
24. Katuzian, N. (2008) Contractual Freedom Limits in Basis of Consumer Protection. *Law Quarterly*, Course 38, No. 3, pp.327-342.
25. Katuzian, N. (2008) The Manner of Interpretation. Speech Published in: *Monthly Publication of Notaries Association*, No. 90, pp. 11-30.
26. Katuzian, N. (2007) *Civil Law ,Non-Contractual Obligations*. University of Tehran Press.
27. Katuzian, N. (2006) *General Rules of Contracts*. Vol. 1, Seventh Edition.
28. Katuzian, N. (2005) Contract Interpretation. *Journal of Law and Political Science Faculty*, No.70, pp. 277-308.
29. March, P.D.V (1993) *Comparative Contract Law* England, France, Germany. Gover Pub. Co.
30. Mulcahy, L. (2008) *Contract Law in Perspective*. Fifth Edition, Birkbeck College University of London, Routledge-Cavendish.
31. Nathan Thal, S. (1998) Inequality of Bargaining Power Doctrine: The Problem of Defining Contractual Fairness. *Oxford Journal of Legal Studies*, Vol. 8, No.1, pp. 17-33.
32. Reiter, B.J. (1981). The control of the contract power. *Oxford Journal of Legal Studies*, Vol. 1, Issue 3, pp. 347-374.
33. Rikett, Ch.E.F., Telfer, Th.W (2003) *International Perspectives on Consumer's Access to Justice*. Cambridge University Press.
34. Schäfer, H.B., Leyens, P.C. (2009) *Judicial Control of Standard Terms and European Private Law & Economics Perspective on The Draft Common Frame*. University of Hamburg - Institute of Law and Economics, Faculty of Law; Max Planck Institute for Comparative and International Private Law, pp. 1-28.
35. Shahidi, M., Bariclu, A. (2002) Non-Trade Agreement. *Name Mofid Journal*, No. 21, pp.4-22.
36. Shifrin, S.V. (2000) Paternalism, Unconscionability Doctrine, and Accommodation. *Philosophy & Public Affairs Journal*, Vol. 29, Issue 3, pp. 205-250.
37. Simler, F. (1998) French Law Solution About Abusive Clauses. Speech Translated by Abbas. Ghasemie Hamed, *Journal of Legal Researches*, Shahid Beheshti University Press, No. 23-24, pp. 239-264.
38. Slayton, Ph. (1976) The Unequal Bargain Doctrine: Lord Denning in *Liyoyds Bank v.Bandy*. *Mcgill Law Journal*, pp. 49-109.
39. Tajarlu, R. (2008) Theoretical Percept From Government Interference in Order to Limiting Contractual Freedom With Reference to English Legal System. *Law Quarterly Journal of Law and Political Science Faculty*, Course 38, No. 3, pp.191-209.
40. Tavassoly, H. (1997) The Basis of Justice in Jan Razl,s Theory. *Naghd o Nazar Journal*, pp. 122-149.
41. Trager, M. (2008) Party Autonomy and Social Justice in Member States and EC Regulation,a Survey of Theory and Practice. In: *Standard Contract Terms in Europe: a Basis For and a Challenge to European contract law* / ed. by Hugh Collins.
42. Trebilcock, M.J. (1993) *The Limits of Freedom of Contract*. Harvard University Press.

43. Trebilcock, M.J. (1996) Critiques of the Limits of Freedom of Contract a Rejoinder. *Osgoode Hall Law Journal*, Vol. 33, No. 2, pp. 353-377.
44. Treitel, G.H. (1978) *The Law of Contract*. 7th ed., Steven & Sons, London.
45. Twigg-Flesner, Ch. (2006-2007) The Implementation of The Unfair Contract Terms Directive in the United Kingdom. University of Hull, *Contemporary Issues in Law*, pp. 1-20.
46. Waddams, S. (2010) Protection of Weaker Parties in English Law. in Kenny, Mel, Devenney ,James, Fox, Lorna O'Mahony, *Unconscionability in European Private Financial Transactions: Protecting the Vulnerable*, Cambridge University press.
47. Waddams, S.M. (1976) Unconscionability in Contracts. *The Modern Law Review*, Volume 39, No. 4, pp. 369-393.
48. Zhou, Q.I. (2010) An Economic Perspective on Legal Remedies for Unconscionable Contracts. *European Review of Contract Law*, 6.1, pp. 25-38.

Comparative study of municipal electoral system in Iran and France

Mohammad Mazhari*

Assistant Professor, Faculty of Law and Social Sciences, University of Tabriz, Tabriz, Iran

Received: 2016/03/04 – Accepted: 2016/05/15

Abstract

An Instance of human rights is the right of everyone to determine their future. Therefore the most important tool for the realization of this right in the contemporary era is attention to the views of citizens through free elections, in a way that the result of the election reflects the views of citizens in governance. The Islamic Councils in Iran are the country's strategic approach to the development of urban and rural people's participation in the decision-making process. Studying the urban and rural councils elections in France can help improve this process in Iran, since France, has a lot of experience in running a city and having municipalities and city councils. A comparative study of the two electoral systems can help better illustrate the strengths and weaknesses of both systems. This topic has not been studied as an independent comparative study between Iran and France before, which makes it a unique study.

Keywords: councils, election, France's legal system, Iran's legal system.

* Email: m.mazhari@tabrizu.ac.ir

References

1. Abbasi, B. (Winter 2008) A study on duties and options of city council and village council in France. *Law Quarterly*, Vol. 45, No. 4.
2. Abbasi, B., Jaafari, M. (Fall and Winter 2011) A comparative study of the electors and the candidate's qualifications in Iranian and Malaysian parliament electoral system. *Comparative Law Review*, No. 2, pp. 115-132.
3. Ahmadi, A. (2010) *Elections in Iran*. First Edition, Tehran: Mizan Publishers. (in Persian)
4. Bozorgmehri, M. (Winter 2011) A comparative study of the electors and the candidate's qualifications in Iranian and French presidential election. *Basic Rights Magazine*, No. 6-7, pp. 45-56.
5. Cole, A. (15-17 April 2003) Decentralisation in France. Back to grass roots or steering at a distance? Political association annual conference, university of Leicester, p. 20.
6. Colomer, J. (2004) *Handbook of Electoral System Choice*. London: Palgrave-Macmillan.
7. Douence, J.C. (1994) *La Commune*. Paris: Dalloz, coll. *Connaissance du droit*.
8. Emami, M., Ostovar Sangari, K. (2010) *Administrative law*. Volume I, 13th Edition, Tehran: Mizan Publishers. (in Persian)
9. Ferguson, S. (2003) *The Right to Vote*. University of Minnesota Human Rights Center, Available at www.umn.edu/humanrts.
10. Ghasemi Hamed, A. (2005) *Accepting-supervision of Islamic city council within urban rights*. Islamic City Council of Tehran, Pezhvak Publishers.
11. Khosravi, H. (2006) *Democratic election law*. First Edition, Tehran: Majd Publishers. (in Persian)
12. Reynolds, A., Reily, B. et al. (2012) *Electoral System Design*. Translated by Rafii Gahsareh, A., Tehran: Strategic Studies Institute. (in Persian)
13. Abbasi, B. (2011) *Administrative law*. Second Edition, Tehran: Dadgostar Publishers. (in Persian)
14. Ghazi, A. (2010) *Requisites for the basic rights*. 37th Edition, Tehran: Mizan Publishers. (in Persian)
15. Goodwin-Gill, G. (2006) *Free and Fair Elections*. Geneva: Inter Parliamentary Union.
16. Goodwin Gill, G.S. (2000) *Free and Fair Elections: International Law and Practice*. Translated by Seyfi J. and Zamani G., Tehran : Rahnamun e Danesh cultural institute. (in Persian)
17. Khorramshad, M.B., Rafii Gahsareh, A. (Fall 2013) *Electoral System of the Islamic Consultative Assembly (Majlis)*. *Contemporary Political Studies*, No. 3, pp. 41-66.
18. Lugan, J.C. (11 April 2001) *The New face of local Government in France*. Melbourne: Australia.
19. Lundell, K. (2010) *Contextual Determinants of Electoral System Choice: A Macro-Comparative Study*. Translated by Ayyari, A., Tehran: Majlis Research Center. (in Persian)
20. Nozari, H. (2003) *Political parties and party systems*. Tehran: Gostarde Publishers. (in Persian)
21. Hashemi, M. (2007) *Basic rights in Islamic Republic of Iran*. Vol. II, 16th Edition, Tehran: Mizan Publishers. (in Persian)

-
22. Hashemi, M. (2005) Human rights and basic freedoms. First Edition, Tehran: Mizan Publishers. (in Persian)
 23. Pastorel, J.L. (2000) Institutions et structures administratives de la France. Paris: Gualiono.
 24. Parsons, T. (1963) On the Concept of Political Power, Proceeding of the American Philosophical Sociology. Published by: American Philosophical Society.
 25. Save, J. (July 1999) Some views on Decentralization in a unitary state and implications for community-based forest management lessons from France. No 9.
 26. Taghizadeh, J. (Fall 2003) Implications for voting rights in French law. Basic Rights Magazine, No. 1.
 27. Taghizadeh, J. (2006) The French Constitution Council and its Supervisory Role in Parliamentary Elections. Private Rights Magazine, No. 10.

A comparative study of Islamic human Rights with the four 1949 Geneva conventions: with emphasis on the treatment of prisoners of war

Seyed Fazlollah Mousavi^{1*}

Professor of Law, University of Tehran, Tehran, Iran

Amir Famil Zavar Jalali²

M.Sc., Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

Received: 2015/11/30 – Accepted: 2016/05/18

Abstract

One of the issues that occur in most wars is the capture of enemy soldiers. International humanitarian law as a branch of contemporary Islamic law has focused on the treatment of prisoners for a long time. Present comparative study in *jus ad bellum* shows that, the four 1949 Geneva conventions and the 1977 additional protocols compared with the Islamic rules of international humanitarian law, has a high degree of convergence with each other. This is based on the assumption that treatment of P.O.Ws exists in the Islamic humanitarian laws. Focusing on the contemporary *jus ad bellum* illustrate that treatment of P.O.Ws in Islamic Humanitarian Law is much broader, more general and humanistic than modern International Law represents today.

Keywords: armed conflict, Islamic humanitarian law, the Geneva Conventions, prisoners of war.

1. Corresponding Author , Email: fmousavi@ut.ac.ir

2. Email: azjalali@alumni.ut.ac.ir

References

1. Holy Quran
2. Ameer Ali (2004) A Short History of the Saracens. The University of California, Kegan Publishing
3. Amanizadeh, A.A. (1994) Investigating the status of Iranian war prisoners in Iraq camps. Tehran: Soroush. (in Persian)
4. Asadi, A.M. (1984) Warfield Rules. 2nd Edition. Qom: Political and Ideological Research and investigation Center. (in Persian)
5. Azimi Shoshtari, A.A. (2013) Islamic international law. Tehran: Dadgostar Publication. (in Persian)
6. Barzanooni, M.A. (2000). Law effects of starting war in Islam and contemporary international laws. Law magazine, No. 25, pp. 275-312. (in Persian)
7. Bo Azar, Tr. By Massod Mohammadi (1990) Islam in modern world. Islamic Culture publication center. First Edition. (in Persian)
8. Daei, A. (2008) The right of war prisoners in human right international law. Tehran: Azadegan Message. (in Persian)
9. Ebrahimi, M. (2011) Islam and General International Law. Tehran: SAMT. (in Persian)
10. Folk, D. (2007) Human right in armed conflict. Tr by a group. National committee of human right, Tehran: Shahre Danesh. (in Persian)
11. Habib Nejad, S.A. (2012) The rights of war prisoners in the light of Islamic teachings according to the third Geneva Convention. In Islamic and international human right contrastive studies. Tehran: Mizan. (in Persian)
12. Hamidolah, M. (2001) The international format of Islamic state. Tr. Seyed Mostafa Mohaghegh Damad. Tehran: Islamic Science publication center. (in Persian)
13. Hejazi, M.A. (2008) Prisoners of war rights. Tehran: Mizan. (in Persian)
14. Henkertz, J.M., Dosvaldbeck, L. (2007) Traditional international human rights. Tr. by Iran Judicial branch international office and red cross international committee. Tehran: Majd scientific and cultural convention. (in Persian)
15. Hingorani, R.C. (1982) Prisoners of war. New Delhi, Oxford & IBH Publishing Co.
16. Jafarian, R. (2004). The Life of Mohammad (Political history of Islam). Qom. (in Persian)
17. Khadoori, M. (2008) War and Peace in Islamic Laws. tr. by Gholamreza Saedi and Introduction by Seyed Hadi Khosroshahi. Tehran: Majd scientific and cultural convention. (in Persian)
18. Kyoichi Tachikawa (2008) The Treatment of Prisoners of War by the Imperial Japanese Army and Navy Focusing on the Pacific War. NIDS Security Reports, no. 9, pp. 45-90.
19. Makarem Shirazi et al. (1991, 1992) Nemoneh Interpretation. No. 8 & 21,. Tehran: Islamic School. (in Persian)
20. Mohaghegh Damad, M. (1994) Islamic Human Right. Tehran: Islamic Science Publication. (in Persian)
21. Momtaz, J., Ranjbarian A.H. (2007) International human rights laws in internal armed conflicts. Tehran: Mizan. (in Persian)
22. Ranjbarian, A.H. (2013-14) War right lessons. Faculty of law and political sciences in Tehran University. (in Persian)

23. Rosau, Sh. (1989) Armed conflict laws. Tr. By Seyed Ali Hanjani. Tehran: International right service center. (in Persian)
24. Siah Rostami, H. et al. (2010) International human right supervising the support of people in armed conflict. Tehran: Helal Ahmar educational center. (in Persian)
25. Tabatabaee, M.H. (1981) Tafsir al Mizan. Tr. By Seyed Bagher Mosavi Hamedani. No. 31. Tehran: Mohammad. (in Persian)
26. Ziaee Bigdeli, M.R. (1987) War right and behaving with prisoners of war. Law magazine: No. 8., pp. 157-182. (in Persian)

A review of the doctrine of reasonable reliance

Esmail Nematollahi*

Assistant Professor, Faculty of Law, Qom University, Qom, Iran

Received: 2015/05/16 – Accepted: 2016/06/16

Abstract

According to Common Law Rules of England, obligation by one party is enforceable when the other has provided a consideration or the contract has been put in a deed. In some common law jurisdictions, such as Australia, Canada and the United States, another doctrine, named Reasonable Reliance, has developed, which could act as surrogate for the doctrine of consideration. English courts, however, have not been prepared to accept such function for this doctrine. According to the doctrine, act of one party when it has been relied by the other, may give rise to an obligation on the first party. This doctrine has been criticized in Common Law countries and may be criticized from the Iranian law viewpoint. However, it has many points in common with some rules in Islamic jurisprudence and Iranian law, and review of this doctrine could prepare a suitable ground for the comparison between Common Law and Islamic jurisprudence and Iranian law in a small part of the law of obligations.

Keywords: Common Law, consideration, Iranian law, Islamic jurisprudence, reasonable reliance.

* Email: e.nematollahi@qom.ac.ir

References

1. Ameli, Zayn al-Din ibn Ali (al-Shahid al-Thani) (1410) *Al-Raouza al_Bahiyyah*. v4, Qom, Davari Bookselling. (in Arabic)
2. Ansari, M. (1415) *Ketab Al-Makseb*, v6, Qom, Sheihk Ansari Congress. (in Arabic)
3. Atiyah, P.S. (1986) *Essays on Contract*. Oxford University Press.
4. Barnett, R.E. (1986) *A Consent Theory of Contract*. *Columbia Law Review*, March, pp. 269-320.
5. Emami, S.H. (1389) *Civil Law*, v1, Tehran, Eslamiyyah Publishing. (in Persian)
6. Fridman, G.H.L. (1974) *The Basis of Contractual Obligation: An Essay in Speculative Jurisprudence*. *Loyola of Los Angeles Law Review*, Vol. 7, No 1. Available at: <http://digitalcommons.lmu.edu/llr/vol7/iss1/1>.
7. Gold, A.S. (2009) *A Property Theory of Contract*. *Northwestern University Law Review*, Vol. 103, No. 1.
8. Golding, M.P., William A.E. (2005) *Philosophy of Law and Legal Theory*. Blackwell Publishing Ltd.
9. Golpayegani, S.M.R. (1409) *Majma al-Masael*, V2&3, *Da al-Quran al-Karim*. (in Persian)
10. Helli, Mohammad ibn Mansour (Ibn Edris) (1410) *Al-Saraer*. v2, Qom. Islamic Publishing Office. (in Arabic)
11. Hogg, M. (2011) *Promises and Contract Law. Comparative Perspectives*, Cambridge University Press.
12. Jackson, Craig Leonard (1998) *Traditional Contract Theory: Old and New Attacks and Old and New Defenses*. *New England Law Review*, Vol. 33:1, available at: <http://www.nesl.edu/userfiles/file/lawreview/vol33/2/jackson.pdf>.
13. Katouziyan, N. (1389). *Specific Contracts*, v4, Tehran, Enteshar Joint-stock Company. (in Persian)
14. Katouziyan, N. (1380) *General Rules of Contracts*. v4, Tehran, Enteshar Joint-stock Company. (in Persian)
15. Katouziyan, N. (1371) *General Rules of Contracts*. v2, Tehran, Enteshar Joint-stock Company. (in Persian)
16. Kronman, A.T.(1981) *Book Review: Contract as Promise*. Faculty Scholarship Series. Paper 1067. available at: http://digitalcommons.law.yale.edu/fss_papers/1067.
17. McKendrick, E. (2000) *Contract Law*, Palgrave.
18. Shahidi, M. (1383) *Effects of Contracts and Obligations*. Tehran, Majd. (in Persian)
19. Shahidi, M. (1380) *Formation of Contracts and Obligations*. Tehran, Majd. (in Persian)
20. Smith, A. (1978) *Lectures on Jurisprudence*. Oxford University Press.
21. Stone, R. (2009). *The Modern Law of Contract*. Routledge-Cavendish.
22. Tunk, A. (1374) *Law of United States of America*. trans, Sayyed Hossein Safai, Tehran, Tehran University. (in Persian)

Comparative study of criminal matters in the motoring vehicle offences in the Iranian legal system and the European court of human rights decisions

Mohammad Reza Yousefi¹

Ph.D. Student of Criminal Law and Criminology, Department of Criminal Law and Criminology and College of Law and Political Science, Islamic Azad University, Tehran Science and Research Branch, Iran

Mohammad Ali Mahdavi Sabet^{2*}

Assistant Professor, Department of Criminal Law and Criminology and College of Law and Political Science, Tehran Science and Research Branch, Islamic Azad University, Tehran, Iran

Received: 2016/01/17 – Accepted: 2016/08/16

Abstract

Criminal matters is one of the most important achievements of modern human rights. The mentioned concept is also the initiative of European Court of Human Rights and one of the important elements of the implementation of article 6 of the European Convention on Human Rights. One of the main results of recognizing this concept is the fact that administrative and disciplinary violations that may not appear to have criminal aspect, are not necessarily out of the coverage of the Article 6. According to the Court, not only does the Article covers them, but it also covers some of the sanctions that may not have criminal aspect, and considers them like those with criminal aspects. One of the sanctions that European Court of Human Rights recognized is driver's license revocation. The provision of Motor Vehicle Offences Act of 1389 in the Iranian legal system also provided driver's license revocation after having too many points on the defendant's driving records. The main concern of current study is comparing and contrasting criminal matters in traffic violation in the Iranian legal system and decisions made by the European Court of Human Rights. To achieve this goal, the description of criminal matters, their criteria, related sanctions for the mentioned violations, and finally the trial procedure for those violations have been examined.

Keywords: criminal matters, decisions of European Court of Human Rights, fair trial, traffic violations.

1. Email: Mryosefi2013@gmail.com

2. Corresponding Author, Email: Ali@mahdavi.fr

References

1. Ashouri, M., Bashriye, H., Hashemi, M., Yazdi, A. (?) Human rights concepts of fairness and justice, equality. First Edition, Tehran: Grayesh.
2. Babaei, M.A., Davar, M (1391). The criminal realm and position it in the Iranian legal system. The teachings of the Islamic criminal law University of Iran, No. 3, pp. 101-128.
3. Delmas-Marty, R. (2002) The great systems of criminal policy. Translated: Ali Hussain Najafi, Vol. 2, First Edition, Tehran: mizan pub.
4. Escoubet v. Belgium, 28 October 1999.
5. Hangl v. Austria, 20 March 2001.
6. Mahoney, P. (2004) Right to a fair trial in criminal matters under article 6 E.C.H.R., Registrar of the European Court of human rights.
7. Malige v. France 23 September 1998.
8. Mole Nuala & Catharina Harby (August 2006) The right to a fair trial A guide to the implementation of the European Convention on human rights. Human rights handbooks, No.3.2 ed., Belgium.
9. Mulot v. France, 14 December 1999.
10. Najafi abrاندabadi, A.H. (2009) The criminal law to criminal science, criminal science (series of articles in celebration of Dr. m. ashouri), Second Edition, Tehran: samt pub.
11. Nilsson v. Sweden, 13 December 2005.
12. Peradel, J. (1376). Looking for a shared strategic principles of criminal procedure different European ritual. Translator: Khazani M., legal services Office, Journal of international law, No. 21, pp. 73-96.
13. Peradel, J., Corsentes, G., Vermeulen, G. (1393). Criminal law the Council of Europe. First Edition, Khorsandy.
14. Putz v. Austria, 11 October 1994.
15. Saghiyan, M.M. (1385) The principle of equality of the weapons in the criminal process (relying on the rights of France and Iran). Journal of Legal Justice, No. 56 57, pp. 79-110.
16. Tershel, E. (1385). Fair hearing in criminal matters. Traslated: Ali Shayan, Legal Justice, New Era Journal, No. 70, Issue 56-57, pp. 255-332.
17. Yavari, A. (1394) The criminal law to the criminal realm. Journal of Legal Studies, University of Shiraz, Vol. 7, No. 2, pp. 241-258.
18. Zhang, J., Xiaohua Liang (March 14/2010) The scope of application of fair trail rights in criminal matters-companing I.C.C.P.R. with Chinese Law, Published online.

Controlling theories regarding abuse of shareholders' voting right in French legal tradition: Implications for Iranian legal system

Abbas Ghasemi Hamed^{1*}

Professor, Private Law Department, Faculty of Law, Shahid Beheshti University, Tehran, Iran

Saeed Haghani²

Ph.D. Candidate of Private Law, Faculty of Law, Shahid Beheshti University, Tehran, Iran

Received: 2016/04/20 – Accepted: 2016/08/22

Abstract

Commercial companies are principally governed by majority rule. This notwithstanding, mere application of this decision-making rule does not prevent conflict of interests between shareholders. Such a conflict can be observed in three distinct hypotheses: 1- abuse committed by majority shareholders; 2 - abuse committed by minority shareholders; 3 - abuse committed by holders of equal shares. Regardless of kind, these deviated forms of majority rule application entail some obstacles to good functioning of corporations. Hence legislatures and courts in many legal systems, taking into account this lacuna in majority rule, endeavor to sanction such malicious maneuvers. Two opposing (at least different) approaches are taken by two categories of legal systems: While American approach invokes “Fiduciary Obligation”, French tradition tends toward a non-contractual institution. According to *Cour de Cassation's* formulation, all forms of voting right contrary to corporate interest merely used to benefit its owner in detriment of concurring group of shareholders, are condemned and consequently sanctioned. There is a wide range of ideas about the very legal foundation of the criteria procured by *Cour de Cassation*. Most of all two theories (abuse of right and diversion of power) seem to be widely accepted. Qualification of voting right as a subjective right or power is thought as the cornerstone of the debate. Still there is no unanimous answer. Regarding the Iranian legal system, it seems unavoidable at first step to enumerate and make a list of potential institutions and foundations for the purpose of legal transplantation. This listing does not *per se* contain their admissibility as the proper foundation of the Iranian legal system as the receiving legal system. It is up to the second step to determine the most proper foundation for a proper transplant. The latter question stands out of this paper's scope and purpose.

Keywords: abuse of right, abuse of voting right, diversion of power, majority rule.

1. Corresponding Author, Email: dr.gh.hamed@gmail.com

2. E-mail: haghani_saeed@yahoo.co.uk

References

1. Bagheri, M. (2012) Abuse of contractual rights in Iranian law. Msc Dissertation, Faculty of law, Chamran University. (in Persian)
2. Bahrami Ahmadim, H. (1998) Abuse of right; a comparative study of Islamic and other legal systems. 3rd ed., Ettelaat Publications, Tehran. (in Persian)
3. Ballandras-Rozet, Ch. (2007) Réflexions sur la dimension morale du détournement de pouvoir. AJDA, pp. 2236-2242.
4. Beihaghi, A. (2011) The histories of Beihaghi. 5th ed., Mashad University publications. (in Persian)
5. Bert, Daniel et Lakhadri, Tayeb (2005). La mise en œuvre de la règle de l'unanimité en droit des sociétés (à propos de CA Versailles, 12e ch. 24 février 2005). Recueil Dalloz, pp. 1853-1863.
6. Cadiet, Loic et Le Tourneau, Philippe (2008) Abus de droit'. Répertoire civil Dalloz, pp. 1-13.
7. Caprasse, Olivier et Aydogdu, Roman (2010) Les conflits entre les actionnaires: prévention et résolution. Lacier, Bruxelles.
8. Champetier de Ribes-Justeau, Anne-Laure (2007) Refus de voter une augmentation de capital et abus de minorité: Note sous Cour de cassation (com.) 20 mars 2007, SA Hexagone Hospitalisation Ile de France c/ Société la Roseraie Clinique Hôpital, Revue des sociétés, pp. 806-813.
9. Champetier de Ribes-Justeau, Anne-Laure (2010) Les abus de majorité. de minorité et d'égalité, Dalloz, Paris.
10. Choley-Combe, J.Y. (1992) L'abus du droit de majorité caractérisé par l'affectation systématique des bénéficiaires d'exploitation aux réserves au détriment des associés minoritaires. Recueil Dalloz, pp. 56-59.
11. Cohen, D. (2003) La validité du coup d'accordéon (à propos d'une jurisprudence récente), Recueil Dalloz, pp. 410-413.
12. De Bauw, F. (1996) Les assemblées générales dans les sociétés anonymes. Bruylant, Bruxelles.
13. De Laubadère, A. et al. (2003) Droit administratif. 17ème éd., L.G.D.J., Paris.
14. Didier, P. (1999) Droit commercial. tome 2, 3ème éd., Press Universitaire de France.
15. Dondero, B. (2009) Le caractère abusif de la décision refusant d'augmenter le gérant d'une SARL Note sous Cour de cassation (com.) 31 mars 2009', Revue des sociétés, pp. 601-606.
16. Durkheim, E. (2014) Discourses on sociology. translated by Mousavi, J., 2nd ed., Ney Publications, Tehran. (in Persian)
17. Dworkin, R. (2009) Political Judges and the Rule of Law'. in: Arguing About Law, Routledge.
18. Dworkin, R. (1986) Law's empire. Harvard University Press, Massachusetts.
19. Erfani, M. (2009) Comparative commercial Law. Vol. 6, 1st ed., Javedaneh, Tehran. (in Persian)
20. Eskini, R. (2004) Commercial companies law. Vol. 2, 6th ed., Samt publishers, Tehran. (in Persian)
21. Gaillard, E. (1985) Le pouvoir en droit privé. Economica, Paris.
22. Guyon, Y. (1993) Abus de minorité : refus d'augmenter le capital d'une SARL dans les limites du minimum légal et rôle du juge'. Recueil Dalloz, pp. 363-365.

23. Haghani, S. (2012) Economic interest grouping: nature and structure, 1st ed., Shahr-e-danesh Publishers, Tehran. (in Persian)
24. Hallouin, J.C. (1998) Le refus par un actionnaire minoritaire de voter une argumentation de capital peut ne pas constituer un abus de minorité dès lors qu'il n'est pas prouvé que cette augmentation est nécessaire à la survie de la société'. Recueil Dalloz, p. 182.
25. Karimi, A. (2009) A comparative study between Iranian and French legal systems concerning abuse of right in Law of contracts. in: Comparative Civil Law, vol. 1., Karimi A. (ed.), 2nd ed., Tehran University and Samt Publishers, Tehran. (in Persian)
26. Katouzian, N. (1979) Abuse of right or faulty exercise of right. faculty of law and political sciences' review, No 21. (in Persian)
27. Katouzian, N. (2006) General rules of contracts. Vol. 2, 7th ed., Public Corporation for Publication, Tehran. (in Persian)
28. Katouzian, N. (2007) Iranian Civil Code in the light of contemporary legal order. 15th ed., Mizan Publishers, Tehran. (in Persian)
29. Katouzian, N. (2011) Tort Law. Vol. 1, 10th ed., Publications of Tehran University, Tehran. (in Persian)
30. Lebreton, G. (2007) Droit administratif général. 4ème éd., Dalloz, Paris.
31. Lombard, Martine et Dumont, Gilles (2009) Droit administratif. 8ème éd., Dalloz, Paris.
32. Merle, Ph. (2008) Droit commercial (sociétés commerciales). 12e éd., Dalloz, Paris.
33. Mohaghegh Damad, M. (2005) Principles of fiqh. Vol. 1, 14th ed., Center of Islamic Sciences Publications, Tehran. (in Persian)
34. Nabavizadeh, A. (2011) Abuse of right concerning contractual rights. 1st ed., Javedaneh Publishers, Tehran. (in Persian)
35. Nobakht, Y. (2005) Judicial criteria. 1st ed., book production publishers. (in Persian)
36. Rahmani, A. (2009) Foundations of majority rule in public companies: a comparative study of British and Iranian legal systems. Legal Research and Science Biannual Journal, No 1. (in Persian)
37. Rahmani, A. (2012) Limits of majority rule in public companies: a comparative study of British and Iranian legal systems. Legal Research Journal, No 1. (in Persian)
38. Rahmani, A. (2007) Majority rule and minority shareholder protection in joint stock companies in England and Iran. PhD Thesis, University of Glasgow.
39. Research Center of Iranian Judiciary (2014a) Periodical of appeal court of Tehran. civil bench. Decisions by March 2012, Publications of the Iranian judiciary, Tehran. (in Persian)
40. Research center of Iranian Judiciary (2014b) Periodical of appeal court of Tehran, civil bench. Decisions by April 2012, Publications of the Iranian judiciary, Tehran. (in Persian)
41. Richer, L. (1995) Droit des contrats administratifs. L.G.D.J., Paris.
42. Ripert et Roblot (2014) Traité de droit des affaires. tome 2 (les sociétés commerciales), rédigé par Michel Germain et Veronique Magnier, L.G.D.J., Paris.
43. Sadeghi, M. (2004) Legal principles and their role in positive law. 1st ed., Mizan Publishers, Tehran. (in Persian)

44. Sharifi Al-e-Hashem E. (2000) Abuse of managing power in public companies (a comparative study). PhD Thesis, Tarbiat Modarres University, Faculty of Law. (in Persian)
45. Simaee Sarraf, H. (2014) A critical view to commercial law pedagogical approach in Iran: teaching method and interpretive approach. in: Commercial law in globalization epoch, Hosseini B. & Masoudi A. (eds), Sahr-e-danesh Publishers, Tehran, 1st ed. (in Persian)
46. Sortais, J.P. (2003) Abus de droit; majorité, minorité, égalité'. Répertoire sociétés Dalloz, pp. 1-13.
47. Tabatabaee Motamen, M. (2008) Administrative Law. 15th ed., Samt Publications, Tehran. (in Persian)
48. Tabatabaee Motamen, M. (2012) Comparative Administrative Law: Rule of Law and comparative administrative proceedings in some outstanding countries. 4th ed., Samt Publications, Tehran. (in Persian)
49. Tricot, D. (1994) Abus de droits dans les sociétés'. RTD com, pp. 617-628.
50. Valpy, F.E.J. (1828) An Etymological Dictionary of the Latin Language. London.
51. Waline, J. (2008) Droit administratif. 22ème éd., Dalloz, Paris.
52. Zandi, M. (2013) Precedent of Iranian courts of first instance in commercial cases. Vol. 1, 1st ed., Javedaneh Publishers. (in Persian)