

Comparative Study of Civil Liability: Indirect Cause and the Direct Cause in Iran Law and Intervening Factor in England Law

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Received: 2017/12/13 - Accepted: 2018/02/25

Abstract

The civil responsibility of indirect cause and direct cause of Iran law has many similarities and differences with the intervening factor in the law of England. The expression of a variety of intervening factors as an independent and dependent intervener shows that an independent intervener is similar to direct cause and dependent intervener is like a poor direct cause. However, due to the changes introduced by Article 526 of the Islamic Penal Code of 1392, in the state of community, indirect cause and direct cause are both principally responsible and, with the difference in the effect of the amount of intervention, responsibility will also be relative, and the tendency towards material and objective factors in Iran law will be more than fraudulent factors and immaterial factors. The civil responsibility of cause priority effect, which is well-known in the community of longitudinal causes in jurisprudence and Iran law, is like the same civil responsibility of cause and primary factor against dependent intervener factor. The direct cause who are affected by the primary cause, committed the felony and hurt in Iran law in state having will is responsible, in contradiction to the procedure of England law, which is such a direct cause is dependent intervening factor and irresponsible.

Keywords: indirect cause, direct cause, independent intervening factor, dependent intervening factor.

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References

A. Persian Resources

1. Aghaeinia, Hossein (1393), Crimes against persons (felonies), Twelve Edition, Tehran: Mizan Legal Foundation.(In Persian)
2. Elizabeth Martin (2006), Oxford Legal Ditionary, 6th Edition, Tehran: Khorsandi Publishing.(In Persian)
3. JafariLangroudi, Mohammad Jafar (1999), law Terminology, 10th Edition, Tehran: GanjDanesh.(In Persian)
4. Haji DehAbadi, Ahmad (2011), Citation and Its Role in Involvement in Crime, Journal of Legal Research, No. 53, pp. 107-146. (In Persian)
5. Hayati, Ali Abbas (1392), Civil liability, First Printing, Tehran: Legal Foundation.(In Persian)
6. KhademRazavi, Qasim and Tydi, Elias and Mehpouyan, Azadeh (1394), The relationship between causality in liability due to carelessness, A comparative view on the civil liability law of Iran and the United Kingdom, Quarterly Journal of Private Law Research, No. 10, Third Year, p. 66 -43. (In Persian)
7. TaheriNasab, Yazdallah (2010), Relationship of causality in Iran and England criminal law, Second Edition, Tehran: dadgostar.(In Persian)
8. Faraji, Mohammad and Gharar, Abolghasem (2011), Government Compensation for the Victims of Criminal Law in Iran and the United Kingdom, Comparative Law Journal, No. II, Volume II, p. 152-133. (In Persian)
9. Fayyaz, Alireza (1370), Concurrent and Compliancein Islamic General criminal law, Second Edition, Tehran: Publications of the Ministry of Culture and Islamic Guidance.(In Persian)
10. Ghyasi, Jalalod -Din (1394), causality in Criminal Laws, Third Edition, Tehran: JangaleJavedenePublications. (In Persian)
11. Katouzian, Nasser (1369), Safeguard, Civil liability, First edition, Tehran: Tehran University Press.(In Persian)
12. Clarkson (1992), Analysis of the Foundations of Criminal Law, Hossein Mir Mohammad Sadeghi, Tehran: MajdPublications.(In Persian)
13. Emdouzian, Iraj (1392), Islamic Penal Code, First Edition, Tehran: Majd Publications.(In Persian)
14. Lotfi, Asadollah (1392), Guaranty and Compensation Guarantee, Second Edition, Tehran: Majd Publications.(In Persian)
15. Mohseni, Farid and Malekoty, Nasir (1394), The relationship between the causality in the Islamic Penal Code 1392, Legal Journal of Justice, No. 91, pp. 159-135.(In Persian)
16. Moosavi Khomeini, Rouhollah (Bey), Tahrir al-Wasileh, in Islami, Qom: Islamic Printing Office.(In Persian)
17. Mir Mohammad Sadeghi, Hossein (1392), Crimes Against Persons, Twelfth Edition, Tehran: Publishing.(In Persian)

18. Mirashkari, Abbas (1396), Practical Thesis on Civil Liability, Third Edition, Tehran: Public Joint Stock Company.(In Persian)
19. NajibHasani, Mahmoud (2012), The Relationship of Causation in Criminal Law, Seyed Ali AbbasniaZare, Third Edition, Mashhad: Razavi Islamic Sciences Publications.(In Persian)
20. Wine R, Lefeo (2004), Causation in the Criminal System of the United States, HosseinAghaniNia, First Edition, Tehran: Publishing. (In Persian)
21. Hart and Honore (1392), Causation in Law, HosseinAghainia, Second Edition, Tehran: Legal Foundation.(In Persian)

B. Arabic resources

22. Bojnourdi, SeyyedMirza Hassan (1419), Al-Fiqahi Rules of the Ismaili Press Institute, Volume II.
23. Sheikh Toosi (Bey), Al-MubsouatFiqqul al-Amamiyah, Maktebeh al-Martazouyah, 8th volume, third edition.
24. Najafi, Sheikh Mohammed Hassan (1981), Jahar al-Klamifi Description Shara'yas al-Islam, seventh edition, Volume 42, Beirut: Dar al-'Arta al-Arabi.
25. HashemiShahrودي, Seyyed Mahmoud and a group of scholars (1423), Mosaleh al-Fiqh-al-Islami, first edition, Qom.
26. Yazdi, Seyyed Mohammad Kazem (1378 AH), Margin on the Makbas, Volume I, Qom: The Ismaili Press Institute.

C. English resources

27. Ashworth, Andrew, (1992), Principles of Criminal Law Oxford University press, London.
28. Clerk and Lindsell, (1995), Torts. Sweet & Maxwell, London, 7th.
29. Douglas, Hodgson, (2013) Intervening Causation Law in a Medical Context, 15U. Notre Dame Austl, L.Rev.22 .
30. Dressler, Joshua, (2006), Understanding criminal law, Lexis nexis, U.S.A.
31. Elliott, Catherine, and Quinn, Frances, (2002), Criminal law, Longman-publisher, London.
32. G.M.V, Clarkson, (1987), Understanding criminal law, Fontana press, London.
33. Goodwin, Schiesl loura, (2004), Causation in California Homicide, Loyol of Los Angeles law review.
34. H.L.A, HART & A.M, HONORE, (1959), Causation in the law, Oxford at the Clarendon press, London.
35. Herring, Jonathan, (2006), Criminal law, Text-cases and material, Oxford, U.S.A.

The Consideration of Possibility of Third Party's invocation To professional Contractual Commitments in the Civil Liability Dispute

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Received: 2017/07/14 - Accepted: 2017/12/07

Abstract

According to the principle of privity of contracts, the contractual commitments are limited to the contract parties, and third parties cannot invoke breach of such commitments in order to prove professional fault. In addition, invoking mere professional contractual and costume obligations would also make some limitations in attaining compensation by third parties. Therefore, different solutions have been devised to protect the third parties in order to exempt them from proving professional civil fault and providing them with the possibility of invoking the breach of all professional contractual commitments either mechanism oriented commitments or result oriented ones. The recognition of breach of contractual commitment as a civil fault, intervention of professional contractual situation in recognition of this civil fault (the idea of privity of contractual fault) and the law-made institutions of commitment in favor of their part, the possibility of making commitment in favor of public and formation of direct contractual relationship between professionals and third party are common solutions. However, regarding the professionals' activities that formed mostly within the contracts' context, the above mentioned institutions are not efficient necessarily to protect third party against damages resulted out of professional activity. Therefore, the judicial practices in England and France protect third party with utilizing the routes of the rules of the parties of contract's possibility to invoke the legal status resulting from contract against third party and/or generalizing the idea of commitment to cautious and care in performing contractual commitments to third parties. In Iran legal system, the possibility of commitment in favor of public in general rules and the professional strict liability against the other party and third party in the Law for Protection of Consumers' Rights are solutions that can be offered in order to protect the third party (rights).

Keywords: Professional, third party, civil liability, the possibility of invocation, strict liability.

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References

1. Eskini, Rabia, Commercial Law, Volume 1, Edition 3, Samt Publication, Tehran, 1382.
2. Badini, Hasan, Comparative Analysis of compensability of “Economic Loss” in Civil Liability, Law Quarterly Magazine, The Law and Political Sciences Faculty, Round 41, Number 1, Spring 1390, 59-78.
3. Badini, Hasan, TO criticize the basis and scope of civil liability of goods and service providers within the frame of the Law for protection of consumers rights approved in 1388, The Legal Researches Magazine, Number 58, Summer 1391, 511-554.
4. Badini, Hasan, Shabani Kondsari, Hadi, Radparvar, Sajad, Strict Liability; Basis and Samples, The comparative Law Studies Magazine, Round 3, Number 1, Spring-Summer 1391, 19-36.
5. Bohrani, Yosof, Hadaegh-o-Nazerah (Arabic), Islamic Publication Institute, Volume 21, Mehr 1363.
6. Jafari Langroudi, Mohammad Jafar, Detailed in Law Terminology, Volume 3, Ganje Danesh Library Publication, 1378.
7. Hajinouri, Gholamreza, The Civil liability from designing and built of infrastructures, PhD Dissertation, The Law and Political Sciences Faculty (Tehran University), 1387.
8. Hekmatnia, Mahmoud, Civil Liability in Shi’a Law, Islamic Culture and Sciences Research Institute, Edition 2, Ghom, 1389.
9. Khoshnoudi, Reza, Comparative study of safety commitment in Iran and France law, Comparative law researches magazine, Round 17, Number 1, Spring 1392, 23-47.
10. Reneh, David and Gophreh Spinouzi, Kami, Two Contemporary Great Legal Systems, Translation and writing by Seyed Hosein Safaei, Mizan Legal Foundation, Edition 9, Winter 1391.
11. Shalileh, Mohammad, Professionals and Professionalism, Economy of auditing magazine, Summer 1383, Number 24, 54-61.
12. Gorden, Patris, Analysis of judicial practice regarding civil liability, Translation and research by Majid Adib, First Edition, Mizan Publication, Tehran, 1386.
13. Gorden, Patris, The principles of civil liability, Translation and research by Majid Adib, Second Edition, Mizan Publication, Tehran, 1385.
14. Safaei, Seyed Hosein, The basis of civil liability of physician in light of new draft of Islamic Criminal Law, The Scientific and Research Journal of Judicial Law Views, Round 17, Number 58, Summer 1391, 141-156.
15. Adel, Morteza and Ghafari Farsani, Behnam, The scope of consumer protection laws and the factors affecting it, Comparative law Studies, Round 1, Number 2, 1389, 159-181.

16. Faramara Gharamaleki and colleagues, Ahad, Professional ethic in Iran and islam civilization, The research Institute Cultural and Social studies, Second edition, Tehran, 1386.
17. Faramarz Gharamaleji, Ahad, An Introduction to Professional Ethic, Saramad Publication, Forth edition, Tehran, 1390.
18. Ghasemi Hamed, Abbas, Brief overview of the theory of obligation to provide the information in contracts from French Law point of view, The Lawyers bar Asociation Journal, Number 10, 1375.
19. Ghadak, Abdorrasoul, Inter-dependence of contracts in consumed credits as per French Law, Legal Research magazine, 1376-1377, Number 21 and 22, 107-148.
20. Ghahramanai, Nasrolla, Civil liability of attorney at law, Gandom publication, First edition, Tehran, 1377.
21. Katouzian, Naser, Civil Law Course, The general rules of contracts, Volume 3, Third edition, New version, Enteshar publication, Tehran, 1380.
22. Katouzian, Naser, Primary Course of Civil Law, Torts, 14th Edition, Enteshar publication, Tehran, 1393.
23. Katouzian, Naser, Civil Liability from defect in production, second edition, Tehran University Publication, 1384.
24., The requirements outside the contracts “general rules”, Tehran University Publication, Volume 1, 8th Edition.
25., Civil Law Course, The general rules of contracts, Volume 4, 5th Edition, Enteshar publication, Tehran, 1387 (b).
26. Kazemi, Mahmud, The necessity of change of civil law regime for physicians in Iranian legal system in light of developments newly made in French Law, Law Quarterly Magazine, The Law and Political Sciences Faculty, Round 41, Number 2, Spring 1391.
27. Moien, Mohammad, Moein Dictionary, 8th Edition, Amirkabir publication, Tehran, , 1371.
28. Valad beigi, Farzad, The general rules of professional civil liability, LLM Thesis, Tehran university, 1391.
29. Hashemi, Ahmad ali, The scope of civil liability, 1th Edition, Emam sadegh university, Tehran, 1389.

Trademark Parody: Infringing Trademark Owner's Rights or Consistent with Freedom of Speech Principle? (Comparative Study)

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Received: 2017/11/08 - Accepted: 2018/02/05

Abstract

Trademark parody which has been recognized as an example of freedom of speech is a means to comment on products introduced by trademark. In this type of imitation, inspired by the original trademark, a humorous form of it is drawn in order to convey a specific message to the reader. Here, the benefits of three groups are at stake: trademark owners who enjoy exclusive rights; parodists who enjoy freedom of expression, and the public who are entitled to benefit from the results of parody. In the law of the United States and countries such as France and Germany, case law has played a significant role in balancing these conflicting interests. Similarity between the parodied trademark and parody and the specific effect of parody on the trademark have led trademark owners to bring infringement and dilution actions. In the Iranian law, there is no specific provision as to trademark parody. However, principle 24 of the Iranian Constitution concerning freedom of expression is a suitable basis for recognizing trademark parody. In this paper, it has been suggested to provide for parody in laws as an exception to trademark owners' exclusive rights and to declare its boundaries.

Keywords: Criticism, exclusive rights, infringement action, dilution action, freedom of speech.

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References

1. Adelman, E. (2006), Trademark parodies, When is it ok to laugh? Trademark Parodies: When is it OK to Laugh?, 6 J. MARSHALL REV. INTELL. PROP. L. 72. pp. 72-100.
2. Afori, O. F. (2015), "Proportionality - a New Mega Standard in European Copyright Law", available at: <http://ssrn.com/abstract=2500232> last visited: 1/31/2018.
3. Ansari, B. (2008), Conditions of Protectable Work in the Literary and Artistic Properties System (Copyright), Legal Researches, n.45, pp. 97-151. (in Persian).
4. Badini, H., Hossein Zade, M. (2015), Study of Legal (Classic) Fair use of Descriptive Trademarks, Commercial Research, n.73, pp. 99-123. (in Persian).
5. Bakhtiarvand, M., Aghamohammadi, A. (2016), Comparative Commercial Advertisements, Economic Law Encyclopedia, y.22, n. 8, pp. 97-123. (in Persian).
6. Bakhtiarvand, M., Tadayon Sadi, M. (2016), a New Study on Trademark Protection in Cyberspace a Comparative Perspective, Comparative Researches, v.20, n.2, pp. 35-57. (in Persian).
7. Basma, D. (2016), The Nature, Scope, and Limits of Modern Trademark Protection: A Luxury Fashion Industry Perspective, University of Manchester.
8. Kemp, D. J., Forsythe, L. M. & Jones, I. M. (2015), Parody In Trademark Law: Dumb Starbucks Makes Trademark Law Look DUMB, 14 J. MARSHALL REV. INTELL. PROP. L. 143, pp. 143-198.
9. Duncan, S. M. (2010), Protecting Nominative Fair Use, Parody, and Other Speech-Interests by Reforming the Inconsistent Exemptions from Trademark Liability, 44 U. Mich. J. L. Reform 219, pp. 219-247. Available at: <http://repository.law.umich.edu/mjlr/vol44/iss1/6>.last visited: 28/1/2018.
10. Emerson, P. (2011), "I'm Litigatin' It": Infringement, Dilution, and Parody under the Lanham Act, 9 Nw. J. Tech. & Intell. Prop. 477, pp. 477-494.
11. Fasihi Zade, A., Momeni Tezerji, E., Bagher Pour, M. (2017), A Comparative Study of the Substantive Provisions of Trademarks with an Emphasis on Color and Three - dimensional Marks, Comparative Law Review, v.7, n.2, pp. 627-646. (in Persian).
12. Friedmann, D. (2015), Trademarks and Social Media: Towards Algorithmic Justice Edward Elgar Publishing.
13. Habiba, S., Hossein Zade, M. (2013), Study of Acquiring Ownership of Intellectual Property, Comparative Law Review, v. 5, n. 2, pp. 35-57. (in Persian).

14. Habiba, S., Hossein Zade, M. (2014), Analysis of Trademark dilution Doctrine in Trademark Law System, *Private Law Studies*, v.43, n. 1, pp. 17-35. (in Persian).
15. Habiba, S., Hossein Zade, M., Mohebbi Fard, S. (2017), Study of Fair use of Another's Trademark to Introduce Goods and Services, *Commercial Studies*, n.78, pp. 125-147. (in Persian).
16. Habiba, S., Mohebbi Fard, S. (2016), Fair use of Another's Trademark in Comparative Advertising, *Legal Studies*, v. 7, n.4, pp. 57-91. (in Persian).
17. Habiba, S., Mozaffari, M. (2017), Exhaustion of Rights Doctrine in Trademarks Field with a Look at Consumer Law, *Private Law Studies*, v.47, n.4, pp. 631-646. (in Persian).
18. <https://law.justia.com/cases/federal/appellate-courts/F2/836/397/420255/>. Last visited:2/1/2018
19. <https://law.justia.com/cases/federal/district-courts/FSupp/648/905/1430875/>.last visited:2/1/2018
20. <https://www.legalis.net/jurisprudences/cour-dappel-de-paris-13eme-chambre-section-a-arret-du-13-septembre-2005/>. Last visited:2/1/2018
21. <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT00007055330>. Last visited: 2/1/2018.
22. Industrial Property Protection Bill, 2016. (in Persian).
23. Jafari, A. (2014), Legal Review of Originality Standard of Literary and Artistic Works (with Critique of Judgment of Branch 1083 of Tehran Penal General Court, *Judicial Law Opinions*, n.65, pp. 15-36. (in Persian).
24. Jafari, F., Mokhtari, M. (2017), Comparative Study of the Nature of Celebrities' Image Rights in Commercial Advertisement, *Comparative Law Review*, v.7, n. 2, pp. 511-532. (in Persian).
25. Kucuk, S. U. (2016), Brand Hate navigating consumer newgativity in the ditigal world, Basingstoke, Pargrave Macmillan.
26. Little, L. E. (2009), Regulating Funny: Humor and the Law, 94 *Cornell L. Rev.* pp. 1235-1292, available at: <http://scholarship.law.cornell.edu/clr/vol94/iss5/9>. Last visited:20/1/2018.
27. Micallef, S. (2015), when Trademark use is not infringement, France, *M anagingip.com* July/ August 2015.
28. Mir Hosseini, S. H. (2016), *Trademarks Law*, 2nd Edition, Tehran, Mizan. (in Persian).
29. Pearson, A. A. (1998), Commercial Trademark Parody, The Federal Trademark Dilution Act, and the First Amendment, 32 *Val. U. L. Rev.*973, pp. 973-1028, Available at: <http://scholar.valpo.edu/vulr/vol32/iss3/5>. Last visited: 28/1/2018.
30. Pontes, L. M. (2015), Trademark and freedom of speech: a comparison between the U.S and the EU system in the awakening of Johan Deckmyn

-
- v. Helena Vandersteen, Available at: http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ipl_ge_15/wipo_ipl_ge_15_t3.pdf. Last visited: 2/1/2018.
31. Ramalhao, A. (2009), Parody in trademark and copyright: has humour gone too far? *Cambridge Student Law Review* (2009), pp. 58-74, available at: <https://www.researchgate.net/publication/220049500>, last visited: 1/31/2018.
 32. Robinson, D. A. (1991), A Fair Use Analysis of Trademark Parody: *Cliffs Notes, Inc. v. Bantam Doubleday Dell Publishing Group*, 11 *Loy. L.A. Ent. L. Rev.* 223, pp. 223-244, Available at: <http://digitalcommons.lmu.edu/elr/vol11/iss1/10>. Last visited: 1/31/2018.
 33. Sauter, W. (2013), Proportionality in EU law: a balancing act? *Tilburg University Discussion Paper*.
 34. Shakeri, Z. (2016), Copyright Infringement through Satire Use of Others Literary and Artistic Works, *Private Law*, v.13, n. 1, pp. 65-78. (in Persian).
 35. Shakeri, Z., Habiba, S. (2012), Exhaustion of Rights in Intellectual Property Law, 2nd Edition, Tehran, Samt. (in Persian).
 36. Simon, D. A. (2013), The confusion trap: rethinking parody intrademark law, *Washington Law Review*, Vol. 88:1021 , pp. 1021-1101.
 37. Stim, R. (2018), *Patent, Copyright & Trademark: An Intellectual Property Desk Reference*, 15th Ed, Berkely, Nolo.
 38. Zarkalam, S. (2009), *Literary and Artistic Law*, First Edition, Tehran, Samt. (in Persian).

An Introduction to the Notion of Administrative Police in Iran, with a Comparative Approach to the French Law

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Received: 2017/09/08 - Accepted: 2017/11/11

Abstract

The administrative police as a function for securing public order is a French notion which provides fundamental conditions for exercising rights and freedoms. The dualism of public order and the existence of general public order and special public order results in the dualism of administrative police. Hence, both general and special police have been developed. In order to secure public order the administrative police inevitably limits the freedoms, a fact that shows the importance of restricting police authorities so that they can be easily monitored. Coming into existence of special polices which aim at arrangements for right-claims is another step towards more legitimate freedoms since these polices are obliged to follow certain procedures. The article is intended to recognize the notion of administrative police by referring to its similar concept, namely, judicial police, and seeks to clarify the necessity of distinction between police authority and police agent as well as administrative police and judicial police.

Keywords: administrative police, judicial police, police authority and police agent, public order.

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References

1. Ahangar, M (2016), Supervision On Council Of Security`s Jurisdiction, MSc thesis, Faculty of Law, Shahid Beheshti University (In Persian).
2. Aubin, E., (2004), “Les évolutions récentes de la fonction d'agent des polices municipales”, AJDA, N° 22, pp.1163-1173.
3. Bordier, D., (2012), “Le maire officier de police judiciaire”, AJDA, N° 4, pp. 189-195.
4. Chapus, R., (2001), Droit administratif général, tome 2, 15^E édition, Paris : Montchrestien.
5. De Laubadère, A, Venezia, J & Gaudemet, Y., (2002) Droit administratif, 17^E édition, Paris : L.J.D.G.
6. Delblond, A., (2009), Droit administratif, Bruxelles : Larcier.
7. Delvolvé, P.,(2006), Le droit administratif, 4^E édition, Paris : Dalloz.
8. Dupuis, G., Guédon, M., & Chrétien, P., (2009), Droit administratif, 11^E édition, Paris : Sirey.
9. Emami, M. and Ostovar Sangari, K., (2010), Administrative law, 13th edition, Tehran: Mizan Press (In Persian).
10. Granger, M., (2011), “La distinction police administrative/police judiciaire au sein de la jurisprudence constitutionnelle”, RSC, N° 04, pp. 273-297.
11. Gonod, P., Melleray, F. & Yolke, P., (2011), Traité de droit administratif, Paris : Dalloz.
12. Jalali, M (2015), “The Guiding Principles of Decentralization in French Law and its Comparison with the Iranian Law”, Journal of Public Law Research, No. 47, pp. 71-11 (In Persian).
13. Jalali, M (2016), An introduction to Iranian administrative law, BSc semester's Booklet, Faculty of Law, Shahid Beheshti University (In Persian).
14. Jalali, M and Kamyab, M (2017), “Administrative Police, The Conceptual Context for Securing Public Order: A Study of French Notion of Public order, The journal of administrative law”, No. 9, pp. 137-164.
15. Kamyab, M (2017), The evolution of administrative police notion and the conditions for the legality of its decisions MSc thesis, Faculty of Law, Shahid Beheshti University (In Persian).
16. Mashhadi, A (2012), The legal context of Discretionary Power, Vice Presidency for Legal Affairs press: Tehran (In Persian).
17. Parizot, R (2015), “surveiller et prevenir... A quel prix? ”, JCP, No 41, p. 1077.
18. Petit, Jacques (2013), “Les aspects nouveaux du concours entre polices générales et polices spéciales”, RFDA, N° 6, pp. 1187-1199.
19. Picard, É., (2013), “Police” dans : Alland, Denis et Rials, Stéphane (dir.), Dictionnaire de la culture juridique, Paris : PUF.

-
20. Roblot-Troizier, A., et Tusseau, G., (2015), “Chronique de jurisprudence Droit administratif et droit constitutionnel”, RFDA, N° 03, pp.597-613.
 21. Tabataba’ee Motameni, M (2016), Administrative law, 16th edition, Tehran: Samt Press (In Persian).
 22. Tifine, P., (2014), Manuel Droit administrative Français, 2de édition, édition juridique franco-allemande (EJFA).
 23. Truchet, D., (2009), Droit administratif, 2de édition, Paris: PUF.
 24. Conseil constitutionnel, 8 juin 2012, N° 2012-253-QPC, “ Le placement en cellule de dégrisement est une mesure de police administrative”, AJDA, 2012, p.1136.
 25. CC, décision No 2003-467 du 13 mars 2003, loi sur la sécurité intérieure.
 26. CE, 16 juillet 1915, “Abbé Couvenhes”, N° 27355, Publié au recueil Lebon.
 27. CE, 8 août 1919, “Labonne”, N° 56377, Publié au Recueil Lebon.
 28. CE, 11 mai 1951, No 2542, “Consorts Baud”, publié au Recueil Lebon.
 29. CE, 2 mai 1973, “Association culturelle des israélites nord-africains de Paris”, N° 81861, Publié au recueil Lebon.
 30. CE, 27 mai 1983, “Fédération d’études et des sports sous-marines”, N° 22687, Publié au recueil Lebon.
 31. CE, 20 décembre 1985, N° 68467, publié au Recueil Lebon
 32. CE, 1 juin 2015, N° 372057, publié au Recueil Lebon.
 33. TA de Montpellier, 19 janvier 2016, N° 1506697, AJCT, 2016, p. 275
 34. CAA Nantes 30 mai 2003, N° 2025, “ Duchemin ”, JCP, 2003, note de R. Vandermeeren.
 35. Tribunal administratif de Paris 5 juillet 2004, “ Opérations de police administrative devenues opérations de police judiciaire”, AJDA, 2004, p. 2013
 36. Décision N° 2005-532 DC du 19 janvier 2006 relative à la loi de lutte contre le terrorisme.

Comparative Study of the Concept and Necessities of Public Criminal Trial in the Iranian Law and International Standards

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Received: 2017/06/05 - Accepted: 2017/12/14

Abstract

The rule of public trial is one of the main manifestations and indexes of fair trial, and is considered as one of the most important enforcements of the rule of fair trial. The rule of public trial has a combined and referable-to-various -elements concept and each of the conceptual elements has its own necessities. Hence, with lack of every conceptual element and its necessities, public hearing will not refer to the concept. So, in this article after explaining conceptual elements and the necessities of the public criminal trial rule under the shadow of international criteria, Iranian Law position is studied in this relation and it is concluded that in spite of investigation of conceptual elements and some of the necessities of public trial rule in Iranian Law, ignoring other important necessities of the rule such as public inaccessibility of documents and deeds of the cases, difficulty in accessibility to the courts' votes and also legal restrictions in the field of releasing proceedings and some other practical limitations, have confronted desired achievement of public trial with serious challenges in the Iranian legal system. In addition, to completing the text, the exceptions and limitations governing this principle are also discussed in this paper.

Keywords: Criminal Procedure, public trial, conceptual elements, international criteria, Iranian Law.

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References

1. Alam, M. (2005), *Standard Justice in International Documents*, First Edition, Tehran, Mizan Publications. (in Persian)
2. Alemanno, Alberto and Stefan, oana, (2014) , openness at the court of Justice of the European Union: Toppling a Taboo, Forth coming in 51 common Market Law Review Issue 1, pp. 97-139.
3. Ansari, B .(2011), *Comparative Study of Media Access to Hearings and Judicial Information*, Quarterly Journal of Law, Thirteenth year, No. 35, pp. 269-308. (in Persian)
4. ----- (2014), *Media Rights*, Third Edition, Tehran, Samt Publications. (in Persian)
5. Bosland, Jason and Gill, Jonathan, (2014), *The principle of open Justice and the judicial duty to give public reasons*, Melbourne University law Review, vol 38:482, pp 471-495.
6. Conley, Amanda and Datta, Anupam and Nissenbaum, Helen and Sharma, Divya, (2012), *sustaining privacy and open Justice in the transition to online cort records: A Multidiseiplinary inquir*, Maryland Law Review, vol 71:772, pp 772-847.
7. European Court of Human Rights, (2014), *Guide on Article 6, Right to a fair trial (Criminal limb)*, available at, www.echr.coe.int.
8. European court of human rights, (2014), *Guide on Article 6, Right to a fair trial (criminal limb)*, available at: www.echr.coe.int.
9. Galegi, M. R. (1406), *Islamic jurisprudence Ali ibn Abi Talib*, Beirut, Dar al-Ma'rafa. (in Persian)
10. Ghorbani, A. (2011), *Fair trial in the European Court of Human Rights*, First edition, Qom, Hogooe Emrooz Publications. (in Persian)
11. Grozev, Yonko and others, (2009), *Right to a Fair Trial under the European Convention on Human Rights (Article 6)*, Interights Manual For lawyers, Prduced with the generous support of the open society institute.
12. Hadavand, M. and Aghaei Touq, M. (2010), *Special Administrative Courts in the Light of Principles and Courts of Fairness (Iranian Law and Comparative Study)*, First Edition, Tehran, Khorsandi Publications. (in Persian)
13. Hormozi, Khairullah (2004), *Justifying Civil Cases and Safeguarding Their Failure*, Journal of Law and Policy Research, No. 11, pp. 27-54. (in Persian)
14. International commission of Jurists, (2009), *Trial observation Manual for criminal proceedings, practitioners Guide no.5*, Geneva, Switzerland.
15. Kashani, S. M. (2004), *International Standards of Justice*, First Edition, Tehran, Mizan Publications. (in Persian)

16. Khaleghi, A. (2004), Openness of proceedings in the light of international documents and domestic law, *Journal of Legal Research*, Third Year, No. 5, pp 29-49. (in Persian)
17. Lawsom, Edward, (2005), *Encyclopedia of Human Rights*, second Edition, United States of America: Taylor and Francis publish.
18. Mahoney, Paul, (2004), Right to a fair trial in criminal matters under Article 6 E.C.H.R, *Judicial Studies Institute Journal*, vol 4:2, pp 107-129.
19. Mclachlin, Beverley, (2014), openness and the Rule of Law, Remark at the Annual International Rule of Law Lecture, London, United Kingdom.
20. Mole, Nuala and Harby, Catharine, (2006), *The right to a fair trial, A guide to the implementation of the European convention on human rights*, human rights hand books, no.3. Belgium.
21. Moradi Hassan Abad, Mohsen (2014), Television Coverage Process in Criminal Courts, *Law Journal of Justice*, seventy-eighth edition, No. 87, pp. 145-163. (in Persian)
22. Mulch Nickel, M. (2005), *The Victims Are Exposed to Judgment; Is The Principle of Public Justice Serving The Victims? In: Crime, Victims and Justice; Articles on Principles and Procedures; Translation by Amir Samavati Pirouz; First Printing, Tehran, Khalilian Publications.* (in Persian)
23. Musavi Bojnourdi, S. S. and Rouhani, S. (2012), Indicators of Judicial Justice from the Viewpoint of Amir Al-Momenin Ali (as) with an Approach to Imam Khomeini's (Saman) Opinions, *Matin Research Journal*, Fourteenth, No. 54, p. 17-39. (in Persian)
24. Naji Zavareh, M. (2015), *Familiarity with the Criminal Procedure*, Volume II, First Edition, Tehran, Shahre Danesh Publications. (in Persian)
25. Navratil, Szonja, (2009), publicity in the Administration of justice and the Disclosures of court Decisions, EOTVOS KAROLY institute.
26. Nikouei, Somayeh (2006), *The Public Criminal Investigation Requirements in the Light of Fair Justice*, *Journal of Legal Justice*, seventy years, No. 56 & 57, pp. 219-240. (in Persian)
27. OSCE office for Democratic Institutions and Human Rights (ODIHR), (2012), *Legal Digest of International Fair Trial Right* printed in Poland by Agencja KARO.
28. Qari Seyyed Fatemi, S.M (2014), *Human Rights in the Contemporary World, An Analysis of Rights and Freedoms*, Volume II, Third Edition, Tehran, Shahre Danesh Publications. (in Persian)
29. Razavi Fard, B. and Ghorbanzadeh, H. (2016), The right to open trial as one of the defended rights in the proceedings of the International Criminal Tribunals, *Journal of Comparative Law Studies*, Volume 7, Issue 1, pp. 163. (in Persian)

-
30. Rodrick, Sharon, (2007), open Justice and Suppressing evidence of police methods: The positions in Canada and Australia, *Melbourne University Law Review*, vol 31. pp 171-200.
 31. Saber, M. (2015), *International Criminal Procedure Code*, Second Edition, Tehran, Dadgostar Publications. (in Persian)
 32. Saferling, Christoph .J. M (2001), *Towards an international criminal procedur*, First published, oxford university press, New York.
 33. Stepniak, Daniel, (2014), *The Theraeputic value of open Justice*, Law school, The University of western Australia.
 34. Symonides, Janusz, (2000), *Human Rights: concept and standards*, UNESCO Publishing.
 35. Tomlinson, Hugh, (2012), *Towards Legal Tranparency*, Justice wide open center for Law, Justice and Journalism (CLJJ) , city university: London.
 36. United Nations Office on Drugs and Crime (UNODC) (2014), *Reference Guide for Health Promotion and Judicial Capacity*, Translator: Hassan Vakilian, First Edition, Tehran, Publishing Center for Press and Publications of the Judiciary. (in Persian)
 37. Vitkauskas, Dovydas and Dikov, Grigoriy, (2012), *protecting the right to a fair trial under the European Convntion on Human Rights*, Council of Europe, human rights hand books.
 38. Vizheh, M. R. and Taheri, A. S. (2011), *An Analysis of the Law of Publishing and Free Access to Information in the Light of the General Principles Governing Access to Information*, *Quarterly Journal of Law*, Thirteenth, No. 35, pp. 237-268. (in Persian)
 39. White, Robin C.A, (1999), *The English Legal system in Action*, Third edition, oxford university press: New York.
 40. Yavari, Assadullah (2004), *The right to fair trial and the new procedure*, *Journal of Constitutional Law*, Second Year, No. 2, pp. 253-292.
 41. Zeraat, A. (1998), *Political Crime*, First Printing, Tehran, Gognoos Publications. (in Persian)
 42. Zeraat, A. and Ahmadi, A. (2007), *The Basics and Effects of the Principle of Personality of the Criminal Procedure Process*, *Journal of Criminal Law*, Vol. 5, No. 2, pp. 111-137. (in Persian)

Cases

43. Case of Komanicky v Slovenia, Application no. 32106/96 2002, June 4, 2002.
44. Case of Dory v. Sweden, Application no. 28394/95, November 12, 2002, para37.
45. Case of Goc V. Turkey, Application no. 36590/97. July 11, 2002, Para 12.

-
46. Case of Pretto and Others v Italy, Application no. 7984/77, December 8, 1983, para 8.
 47. Case of Riepan v. Austria, Application no. 35115/97, November 14, 2000, Para 29.
 48. Case of Salomonsson v. Sweden, Application no. 38978/97, November 12, 2002, para 36.
 49. Case of Steel and Morris v. the United Kingdom, Application no. 68416/01, February 15, 2005, para 59.
 50. Case of Tierce and Others v. San Marino, Applications nos 24954/94, 24971/94 and 24972/94- July 25, 2000, Para 93.
 51. Human Rights Committee, Communication no. 848 / 1999, Para. 7.3.
 52. Human Rights Committee General Comment 32. CCPR/C/GC/32, 23 August 2007.

A Comparative Study between European and Iranian Laws of Service Contracts

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Received: 2017/12/20 - Accepted: 2018/03/04

Abstract

In recent years, the European Union based on the law of its members has drafted two groups of articles about contract of services. These two instruments are principles of European law on service contracts and CFR. With regard to the similarity of the systems of contract law in Iran and Europe, the subject of this research is a comparative review of the obligations of parties in service contracts in European and Iranian Laws. This study evaluates the achievements of the European law based on the Islamic and Iranian laws and States regulations of which could be accepted in Iranian law. It has been concluded that, similar to European law, we could accept obligations such as: conformity, obligation of skill and care, duty to inform and notice, payment (even if it is not specified in the contract) and the obligation to cooperate.

Keywords: service contract, conformity, duty to inform and notice, price fixing, obligation to cooperate, European contract law

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References

1. Akhlaghi, B., Emam, F. (2014), Principles of international commercial contracts, Tehran: Shahr danesh Pub. (in Persian)
2. Amini, M., Shokuhyan, A. (2016), Optimizing the functioning of the negligence-based responsibility principle, with an emphasis on the tort liability of Physicians, Legal Research Quarterly, Volume 19, Issue 76, pp. 57-82. (in Persian)
3. Bariklou, A., Khazaei, A. (2011), The Good faith Principle and its Legal Consequences in the Pre - contractual Stage; A Comparative Study in the UK and French Law, The Judiciary Law Journal, Volume 75, Issue 76, pp. 53-88. (in Persian)
4. Jafari, M. (2003), The theory of balance, Tehran: Ganj danesh Pub. (in Persian)
5. Hashemi, M. (2007), Persian encyclopedia of jurisprudence, Volume 1, Qom: Institution of Islamic jurisprudence encyclopedia. (in Persian)
6. Jonaidi, L (2002), Comparative study of obligation to provide information with reference to Common Law systems, Law and Political Science, Volume 56, Issue 0, pp. 11-48. (in Persian)
7. Khedmatgozar, M. (2010), Contractual obligation of security, Tehran: Jungle publication. (in Persian)
8. Khorsandian, M. (2004), Distinction between sale and contract agreement, Comparative Law Research, Volume 8, Issue 3, pp. 131-152. (in Persian)
9. Khorsandian, M., Sharaei, E. (2017), the Rule: Negation of System Disorder in Islamic civil law, Tehran: Gostaresh rayane Pub. (in Persian)
10. Daraei, M. (2016), Discharge of Civil Liability of Physicians in New Islamic Penal Code of Iran, JPLR, Volume 4, Issue 14, PP. 53-80. (in Persian)
11. Shoarian, E. (2011), The Duty of Obligee to Cooperate in Contract Performance, JOLT, Volume 8, Issue 18, PP. 109-138. (in Persian)
12. Shoarian, E., Rahimi, F. (2015), Physical Conformity of the Goods with the Contract in the CISG and Iranian Law, International Law Review, Volume 31, Issue 51, pp. 41-66. (in Persian)
13. Shahidi, M. (2004), Results of contracts and obligations, Tehran: Majd publication. (in Persian)
14. Shahidi, M. (2007), Implied Terms of Contract, Tehran: Majd publication. (in Persian)
15. Salehirad, M. (1999), Good faith in performing contracts and its results, The Judiciary Law Journal, Volume 63, Issue 23, PP.83-116. (in Persian)
16. Safaei, H. (1996), Articles on Civil Law and Comparative Law, Tehran: Mizan publication. (in Persian)
17. Abdipour, E., Partow, H. (2012), Legal conformity of goods and its sanctions, JLQ, Volume 42, Issue 2, pp. 199-215. (in Persian)

18. Abdipour, E., Ghasemzadeh, R. (2011), The Theoretical Bases of Proponents and Opponents of Imposing General Duty to Inform in Contracts, *Comparative Law Research*, Volume 15, No.1, Tom 71, PP. 83-105. (in Persian)
19. Aliahmadi, H. (1996), Performance of contractual obligation, Tehran: Berahmand publication. (in Persian)
20. Ghasemihamed, A. (1996), A brief overview of the theory of obligation to provide information in the contract from the point of view of French law, *Journal of the Bar Association*, Issue 10, pp. 87-122. (in Persian)
21. Katouzian, N. (1992), *Iranian Civie law: Specific Contracts*, volume 1, Tehran: Enteshar Co. publication. (in Persian)
22. Katouzian, N. (2003), *General Theory of Obligation*, Tehran: Mizan Pub. (in Persian)
23. Katouzian, N. (2007), *Elementary courses of Iranian civil law: Juridical facts*, Tehran: Enteshar Co. publication. (in Persian)
24. Karami, S. (2016), Inequality of bargaining power as a basis for control of contract, *JCL*, Volume 7, Issue 2, PP. 693-723. (in Persian)
25. Kotz, H. (2006), *Europaisches Vertragsrecht: Formation, Validity, and content of*, Translated by Ahmadvand, V. & Others, Tehran: Jahan Jame Jam Pub. (in Persian)
26. Mortazavi, A. (2010), *Law of obligations: Obligation de Moyens Obligation de résultat*, Tehran: Jungle publication. (in Persian)
27. Alhooe Nazari, M. Yahyapoor, J. (2012), A comparative study of the ability to determine the price in Iran and England legal system, *The Judiciary Law Journal*, Volume 76, Issue 80, PP. 121-143. (in Persian)
28. Ibn Manzour, M. (1987), *Lesan Al-Arab*, Volume 1, Beirut :Dar Al-Ahya Pub. (Arabic)
29. Al-Husseini al-ameli, M. (2012) *Meftah al-Qaramah*, Volume 13, Qom: Institution of Islamic publication. (Arabic)
30. Husseini, S. M. A. (1997), *Anavin Al-feqhieh*, Volume 2, Qom: Institution of Islamic publication. (Arabic)
31. Hakim, M. (2013), *Mostamsak orvat ol-vousgha*, Volume 12, Najaf: Aadab Pub. (Arabic)
32. Khuwei, S. A. M. (1962), *Mesbah al-Feqahe*, Volume 1, Beirut: Dar al-Hadi Pub. (Arabic)
33. Khuwei, S. A. M. (1992), *Mostanad orvat ol-vousgha*, book of Lease, Najaf: Bina Pub. (Arabic)
34. Aameli, Z. (1992), *Masalik al-Afham*, Volume 5, Qom: The Islamic Knowledge Foundation. (Arabic)
35. Najafi, M. H. (1981), *Jawaher al-Kalam*, Volume 27, Beirut :Dar Al-Ahya Pub. (Arabic)
36. Atiyah, P.S., Adams, J.N., Macqueen, H. (2001), *The sale of goods*, 10th edition, London: Pearson Education.

-
37. Bailey, J. (2014), *Construction Law*, Florida: Crc Press.
 38. Barendrecht, M. & Others (2006), *Principles of European Law on Service Contracts*, Berne: European Law Publishers And Publishers Ltd.
 39. Beale, H. (2010), *Chitty on Contracts II*, London: Sweet and Maxwell.
 40. Burrows, J. F. (1968), *Contractual Co- Operation and the Implied Term*, *The Modern Law Review*, volume 31(4), pp. 390-407.
 41. Busch, D. (2002), *The principles of European contract law and Dutch law: A commentary*, Vol. 1, Netherlands, Hague: Kluwer Law International.
 42. Chambers, A. (1995), *Hudson's building and engineering contracts*, 11th edition, London: Sweet and Maxwell.
 43. Chitty, J. (2012), *Chitty on Contracts: General principles*, London: Sweet & Maxwell.
 44. Jansen, C. E. C. (1998), *Towards a European Building Contract Law: Defects Liability: a Comparative Legal Analysis of English, German, French, Dutch and Belgian Law*, Tilburg: Schoordijk Instituut.
 45. Kessler, F., Fine, E. (1963), *Culpa in Contrahendo, Bargaining in Good Faith, and Freedom of Contract: A Comparative Study*, *Harvard Law Review*, Vol. 77, pp. 401-449.
 46. Lando, O. & Beale, H. (2000), *Principles of European Contract Law*, Part I, II & III, Hague: Kluwer Law International.
 47. Markesinis, B. S., Unberath, H., & Johnston, A. (2006), *The German Law of Contract: a comparative treatise*, London: Hart Publishing.
 48. *Restatement (Second) of Contracts* (1979). American Law Institute, Section 19, comment B.
 49. Schauer, Martin (2008), *Contract Law of the Services Directive*, *European Review of Contract Law*, volume 4, issue (1), pp.1-14.
 50. Simon, R. I. (2005), *Standard-of-Care Testimony: Best Practices or Reasonable Care?*, *Journal of the American Academy of Psychiatry and the Law*, Vol 33(1), pp.8-11.
 51. Speidel, R. E. (1982), *Restatement Second: Omitted Terms and Contract Method*, *Cornell L. Rev.*, Volume 67, Issue 4, pp 785-809.
 52. Steensma, A. (2009), *Implied Obligations of Non-Hindrance and Cooperation in Construction Contracts*, *CMS Law: Tax*, pp. 1-16.
 53. Von Bar, C., Clive, E., Schulte-Nölke, H. (2009), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference*, Outline edition: Mnchen sellier european law publisher.
 54. Wilhelmsson, T. (2006), *European Rules on Pre-contractual Information Duties?*, *ERA-Forum*, Vol. 7, No.1, pp. 16-25.

The Application of the Theory of Voluntary Assumption of Risk in Athletes' Civil Liability: A Comparative Study in English, French and Iranian law

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Received: 2017/08/24 - Accepted: 2017/12/17

Abstract

The theory of voluntary assumption of risk is an often-quoted form of the roman legal maxim and it fully exonerates the defendant. The essential elements of the defence of *volenti* are the explicit or implicit consent of the victim to waive all claims for damages and also the fully awareness of the victim of all the risks involved, including both the nature and the extent of the risk. The theory has specific features in French sport cases and it is considered as a victim's consent and a "fait justificatif spécial". In this matter, a reform has occurred in French sport law recently. English and French jurists have different perspectives on the effect of this theory. In this paper we will specify comparatively the nature, theoretical basis, essential conditions and legal effect of *volenti* in sport cases (its main domain of application) by referring to relevant doctrines, codes and precedent in English and French civil liability. Then we will compare their results with the effect of similar legal institution in Iranian sports law.

Keywords: Ezn (permission), Consent, Sports law, *Volenti*, Civil liability.

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References

1. Achrash, Nasser (2011), The Effect of assumption of risk in seeking compensation: A comparative study of French and common law, PhD thesis in Tehran University. (in Persian)
2. Amili, Zayn al-Din, Shahid Thani (1989), *Al-Rawḍa al-bahīyya fī sharḥ al-lūm'at al-dīmaḥqīyya*, Vol. 4, First Edition, Qom: Davari Bookstore. (in Arabic)
3. Amili, Zayn al-Din, Shahid Thani (2004), *Masalik al-afham*, Vol. 15, Third Edition, Qom: Maaref Al-Eslamiyah (in Arabic)
4. Awdah, Abd al-Qādir, *Al-tashri' al-jina'i al-islami*, Vol. 1, Beirut: Dar al-kotob al-arabi. (in Arabic)
5. Campguilhem, R. (1961), *La notion d'acceptation des risques sportifs et le droit de la responsabilité civile*, Thèse, Paris.
6. Demogue, R. (1925), *Traité Des Obligations En Général*, Tome 5, Paris : L .Arthur Rousseau.
7. Durand Paul J. (1931), *Des conventions d'irresponsabilités*, Thèse, Paris.
8. Esmein, P. (1952), 'L'idée D'acceptation Des Risques En Matière De Responsabilité Civile'', *Revue Internationale De Droit Comparé*, Vol. 4, Issue 4, pp.683-691.
9. Ghabouli Dor afshan. Mohammad Mahdi; Reza doust, Vahid (2012), 'The Function of External Causes (Causes Étrangères) in Civil Liability of Car Accidents According to Recent Reforms: A Comparative Study of French and Iranian law'', *Comparative Law Review*, Vol.3, No.1, pp. 93-110.
10. Gerard, Emmanuel (Avril 2014), 'La Notion Du Risque Accepté'', *Subaqua, Rubrique Juridique*, N° 253, pp. 80-81.
11. Groutel H. (1999), 'L'acceptation des risques: dérapage ou décollage?', *Responsabilité civile et assurances*, Editions du jurisclasser, juillet-août 1999, Chron. N°16, spec.
12. Hocquet-Berge, S. (Février 2011), 'L'acceptation Des Risques En Matière Sportive Enfin Abandonnée'', *Revue Mensuelle Lexisnexis Jurisclasser*, N°2, Étude 3, <http://laboratoire-droit-sport.fr/wp-content/uploads/2013/04/Acceptation-des-risques-abandonn%C3%A9-F%C3%A9vrier-2011.pdf>, 16/4/2018.
13. Honorat J. (1969), *L'idée d'acceptation des risques dans la responsabilité civile*, Paris : Librairie générale de droit et de jurisprudence.
14. osseini Maraghi, Mir Abdul Fattah (1997), *Alanavin*, Vol. 1 & 2, Qom: Institute for Islamic. (in Arabic)
15. Jafari Langeroudi, Jafar (2001), *The Philosophy of civil law*, Tehran: Ganje Danesh. (in Persian)

16. James, Mark (2013), *Sports Law*, Second Edition, Palgrave Macmillan Law Masters, UK.
17. James, Mark (2006), "Liability for professional athletes injuries: a comparative analysis of where the risk lies", Web journal of current legal issues, <http://usir.salford.ac.uk/1058/1/james1.pdf>, 16/4/2018.
18. Jourdain, Patrice (2007), *Les Principes De La Responsabilité Civile*, 7^e Édition, Traduit par Majid Adib en persan, Téhéran : Éditions Mizan. (in Persian)
19. Katouzian, Nasser (2006), *Extra-contractual obligations*, Vol. 1&2, Fifth Edition, Tehran University. (in Persian)
20. Katouzian, Nasser (1999), "Sport Negligence and Sport Liability", *Journal of Tehran University*, N° 43, pp. 37-57. (in Persian)
21. Kulaynī, Muhammad ibn Ya'qub (1988), *Al-Kafi*, Vol. 7, Third Edition, Tehran: Dar al-kotob al-islami. (in Arabic)
22. Lozach, Jean-Jacques (2012), *Rapports législatifs* , Rapport n°372, <https://www.senat.fr/rap/111-372/111-372.html>, 16/4/2018.
23. Makarem Shirazi, Nasser (1989), *Al-Qawaidul Fiqhiyyah*, Vol. 1 & 2, Second Edition, Qom: Madreseh Imam Amir Al-Momenin. (in Arabic)
24. *Mawsuat al-fiqh al-islami al-mogharen*, (1966), Vol. 3. Cairo, Al-Majlis al-ala lelshoun al-islami. (in Arabic)
25. Megdadi, Mohammad Mehdi (2014), "The Effect of Assumption of Risk (Eqdam) in exonerating the civil liability of sport athletes", *The Journal of Comparative Law of Mofid University*, N° 102, pp. 133-150. (in Persian)
26. Mohaghegh Karaki , A.H. (1993), *Jame Al Maghased Fi Sharh Al Ghavaed*, Vol. 6, Second Edition, Qom: Institute Of Ahl-E-Bayt. (in Arabic)
27. Momen Qomi, Mohammad (۱۹۹۴), *kalamate Sadide*, First Edition, Qom: Islami publication. (in Arabic)
28. Najafi, Mohammad Hassan (1983), *Jawahir al-kalam*, Vol. 43 & 42, Seventh Edition, Beirut: Dar Ihya'al-Turath al-Arabi. (in Arabic)
29. Pilloix , Arnaud (2013), "Théorie De L'acceptation Des Risques :État Des Lieux", <https://www.ellipse-avocats.com/2013/02/theorie-de-lacceptation-des-risques-etat-des-lieux/>,16/4/2018.
30. Rashid Samiri, Mufleh Bin Hassan (1999), *Ghayat al-Maram -fi sharh shara'i' al-islam.*, Vol.2, First Edition, Beirut: Dar al-Hadi. (in Arabic)
31. Ruiz, Romain (2013), *L'acceptation Des Risques Dans La Pratique Sportive*, M2, Université Paris Sud 11, Faculté Jean Monnet.
32. Safai, Hossein; Rahimi, Habibollah, (2010), *Civil Liability (Extra-Contractual Obligations)*, Tehran: Samt publication. (in Persian)
33. Sweep, F.F.C.C. (2015), *Volenti non fit injuria ? How Does Consent Influence the Perception of the Ideal Victim*, Master Thesis Faculty of Law Tilburg University.

-
34. Tabatabai Yazdi, Mohammad Kazem (1999), Hashie Al Makaseb, Vol.1, Qom: Ismailian. (in Arabic)
 35. Tunc , A et Mazeaud, L. et H. (1960), Traité théorique et pratique de la responsabilité civile délictuelle et contractuelle, T.2. N°, 1485 Et S ; T1, N°151, Paris : Montchrestien.
 36. Ulpian, Domitius, Digeste(Pandectes), Livre 4^v, Titre 10, Paragraphe 5.
 37. Van Gerven, W. (2000), Cases, Materials and Text on National, Supranational and International Tort Law, Oxford: Hart Publishing.
 38. Viney, G. et P. Jourdain (2006), Les conditions de la responsabilité, 3^{ème} Édition, Paris.
 39. Yazdani, Alireza; Mahdavi Seyyed Mohammad Hadi; Abbasian Reza; Mosallanezhad Niusha (Spring & Summer2016), ‘A comparative study of objects realms in the civil liability resulting from objects at Iranian and French Laws’, Comparative Law Review, Vol.7, No.1, pp 367-383.

Extermination through Human Security Violations

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Received: 2017/11/28 - Accepted: 2018/03/02

Abstract

There are some overlaps between extermination as an example of crimes against humanity, with the notion of committing acts aimed at destroying a particular population and violating some instances of the seven dimensions of human security, including economic security, food security, health security, environmental security, personal security, community security and political security. As a result, many violations of human security can be considered as the material factor of extermination. In this paper, by examining the nature of each of the two concepts of destruction and human security, it is concluded that if the actions such as economic sanctions against a country, promotion of the cultivation of a water-based product in a region facing water crisis, an unrealistic change in the priority of the health system of a country, building of a dam on the rivers which leads to an area where a group of people are living, the diversion of policies and environmental protection programs directed to a group of people, the promotion of single-child values among a group of people with the aim of eliminating those groups, we should consider these violations of human security as an example of extermination. The International Criminal Court will also be the competent authority for this crime.

Keywords: Crime against Humanity, Extermination, Human Security, International Criminal Court.

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References

1. Aghaei Jannat Makan, Hossein (2009), "Formation of Special Tribunal for Lebanon; Different View of International Criminal Law", *Journal of Private Law Studies*, Volume 93, No. 2, pp 23-44.
2. Alkire, Sabina (2003), "A conceptual framework for human security", Center for Research on Inequality Human Security and Ethnicity (CRISE), London: Oxford university .
3. Articles of the draft Code of Crimes against the Peace and Security of Mankind , Report of the International Law Commission on the work of its forty-eighth session, (1996).
4. Baloochi, Heidar Ali (2000), "Human Security in International Relations", *Events and Analysis Monthly*, No. 145, pp34-35. [in Persian]
5. Bantekas, Ilias (2006) "Corruption as an international crime and crime against humanity: An outline of supplementary criminal justice policies", *Journal of International Criminal Justice*, Vol.4, No.4, 1-19.
6. Firooz Abadi, Seyyed Jalal (2008) "Human Security", *Journal of Strategic Studies*, No. 41.[in Persian]
7. Greenwood, Christopher (1998), "The development of international humanitarian law by the international criminal tribunal for the former Yugoslavia", *Max Planck Yearbook of International Law* .
8. History of the United Nations War Crimes Commission and the Development of the Laws of War (1948), Published by His Majesty's Stationary Office for the UNWCC: London.
9. Juge d'instruction Bruxelles, (1999) Ordonnance 6 Nov 1998, *Revue de droit penal et de criminologie* available at: www.haguejusticeportal.net/.../pinochet_mandat_arret_06-11-98.pdf.
10. Malcom D., Evans (2007) "Statute Of The International Tribunal For The Prosecution Of Persons Responsible For Serious Violations Of International Humanitarian Law Committed In The Territory Of The Former Yugoslavia Since 1991(Statute Of ICTY)." *International Law Documents*, Eighth Edition, Oxford: Oxford University Press, 61-352.
11. Mettraux, GUÉNAËL (2005), *International Crimes and the Ad Hoc Tribunals*, Oxford: London.
12. Mir Mohammad Sadeghi, Hossein (2004), "Insanity, Drunken and minor age in the Statute of the International Criminal Court", *Procedure Journal*, No. 44, pp7-9.[in Persian]
13. Mohammad Khani, Abbas (2012), "Crimes against Humanity in the Judicial Process of the United Nations' International Criminal Tribunals", *Police International Studies*, No. 11, pp20-41.[in Persian]
14. Official Records of the General Assembly,(1996) Fifty-first session, Supplement No.10, *Yearbook of the International Law Commission*, vol. II(2)

15. Poursaeid, Farzad (2008), "Human Security in the Constitution of Islamic Republic of Iran", *Strategic Studies Quarterly*, No. 41, pp545-571.[in Persian]
16. prosecutor v. Blaskic ,(2004) case no IT-95-14-A, judgment, appeals chamber.
17. Prosecutor V. Eichman, *International Law Reports*, 1996.
18. prosecutor v. kajelijeli, (2003)judgment, trial chamber.
19. Prosecutor v. Kordic, ICTY, (2004) Case No IT-95/14/2-A, judgment, appeals chamber.
20. Prosecutor v. Kunarac et al. (2002) Case no IT-96-23-A, judgment, appeals chamber.
21. Prosecutor v. Mile Mrkić, (2009) Case No. It-95-13/1-A, para.235-239 .
22. Prosecutor v. Mrksic (1996), (Vukovar Hospital Decision), Review of the Indictment Pursuant to Rule 61 of the rules of procedure and evidence.
23. Prosecutor v. Muhimana, (2005) Case No . ICTR-95-1B-T.
24. prosecutor v. Muvunyi,(2006)Case No. ICTR -00-55A-T, Judgment, Trial chamber.
25. prosecutor v. Semanza, (2003),Case no ICTR-97-20-T, trial chamber.
26. prosecutor v. Stakic, (2003),Case No It-97-24-T, ICTY trial chamber.
27. Prosecutor v. Tadic, (1995), Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber.
28. Prosecutor vs. Jean-Paul Akayesu, (1998),Internationa Criminal Tribunal for Rwanda, Judgement of Chamber I Case No. ICTR-96-4-T.
29. Prosecutor vs. Tadic, (ICTY), (1999), Judgment in the Appeal Chamber, Case No. IT-94-1-A.
30. Public Prosecutor v. Menten, Judgment ,(1981) ,Supreme Court of the Netherlands.
31. Qasemi, Mohammad Ali (2005), "Human Security: Conceptual Foundations and Strategic Requirements, *Strategic Studies Quarterly*, No 30, pp817-833. [in Persian]
32. Report of ILC special Rapporteur D. Thiam ,*Yearbook of International Law Commissions*,(1986) Vol.2 , U.N.Doc.A/CN.4/466 (1986 ILC special Rapporteur report).
33. Report of UN Secretary- General ,(1993).
34. Saber, Mahmoud (2009), "The Procedure of Prosecution of Crimes in the International Criminal Court", *Private Law Studies*, Volume 39, No 2, pp169-192.[in Persian]
35. Sadeghian, Seyyed Jalal (2003), "An Introduction to Security and Its Dimensions and Scope", *knowledge Enforcement Quartely*,No 16, pp54-74. [in Persian]
36. Salimi, Sadegh, Kashan, Habib (2014),”Review of compliance of the Israeli regime's actions with the examples of crimes against humanity in

- the occupied territories”, Free Legal Research Journal, No 24, pp91-105. [in Persian]
37. Statute of International Criminal Tribunal For Rwanda (Statute Of ICTR) (1994). Available at: http://www.unicttr.org/sites/unicttr.org/files/legal-library/100131_Statute_en_fr_0.pdf.
 38. Statute Of Special Court For Sierra Leone (Statute Of SCSL), (2002). Available at: <http://www.rscsl.org/Documents/scsl-statute.pdf>.
 39. The Prosecutor V. Alfred Musema (2000) Case No. ICTR-96-13-A, Trial Chamber Judgement.
 40. The Prosecutor V. Vincent Rutaganda(2000), Case No. ICTR -95-1C, Trial Chamber Judgement.
 41. The Rome Statute of The International Criminal Court, A/CONF.183/9 of 17 July 1998.
 42. United Nations Development Program, Human Development Report (1994), Oxford: NewYork.
 43. Yearbook of International Law Commission (1993), Vol.1, available at: http://legal.un.org/ilc/publications/yearbooks/english/ilc_1993_v2_p1.pdf.
 44. Zaghali, Abbas (2009), "Analysis of International Criminal Tribunal's Capacity in the Human Trafficking", Journal of Law and Policy Research, No 62, pp 181-202.[in Persian]
 45. Zapala, Salvatore, Abud Majid Soudmandi (2006), "Senior Officials and International Criminal Immunity", Strategic Quarterly, No 41, pp 297-316.[in Persian]

A Comparative Study between the Status of the Rights of Minorities in the Iranian Charter on Citizens' Rights and the United Nations Declaration on the Rights of Minorities

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Received: 2017/11/24 - Accepted: 2018/02/01

Abstract

The topic of minorities rights is one of the blatant manifestations of human rights, which has been considered by the national and international legal systems. Protection of minorities rights is to be done in legislative form and through the legal documents and non-legislative form. A comparative analogy between the substance of the UN Declaration on Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and the Iranian Charter on Citizens' Rights (2016) as non-obligatory documents, may picture the panorama of the minorities rights in the two mentioned systems. The comparison reveals that the Charter coincided with the international standards mentioned in the declaration through considering particularly the non-discrimination principle, cultural participation and diversity mentioned in the declaration. It should be mentioned that the Charter has not considered some affirmative obligations of the government in protecting the survival of minorities and non-considering the prohibition and punishment of the minority rights activists. Still the Charter is much more developed than the declaration in some fields like considering the prohibition of hatred speech. The noticeable compatibility of the Charter substance with the declaration reveals that the Charter is implicitly impressed by the declaration.

Keywords: Minorities Rights, the Iranian Charter on Citizens' Rights, the United Nations Declaration on Minority Rights.

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References

1. Ahmadi Tabataba'i, S.M.R, (2009), Civil Rights with an Emphasis on the Constitution of Islamic Republic of Iran, *Journal of First Line, Islamic Revolution Approach*, no. 8, pp. 3-18 (in Persian)
2. Akhavan, Monireh, (2016), Minorities Rights in International Law & Islamic Republic of Iran, *Journal of Women Rights Protection Studies*, no. 8, pp. 47-70. (in Persian)
3. Eslami, Reza & Kamalvand, M.M., (2014), Freedom of gatherings in Iranian law system in the light of International Human Rights setting, *Journal of International Law*, no. 50, pp. 187-222. (in Persian)
4. Beygzadeh, Ebrahim & Majdzadeh, Ghazal (2012), Modern Government, Cultural Rights of the indigenous people and the minorities, *Journal of Legal Research*, no. 8, pp. 279-314. (in Persian)
5. Parvin, Kheyrollah & Sepehrifar, Sima, (1995), Minorities' Rights in Constitution, *Journal of Islamic Human Rights Studies*, no. 6, pp. 73-96 (in Persian)
6. Rostami, Sorayya, (2013), Civil Rights and legitimate freedoms, *Journal of Islamic Fiq'h and Law Bases*, no. 1, pp. 141-162. (in Persian)
7. Zamani, S.GH. (2005) Minorities Protection in Human Rights Universal Documents, *Journal of law & Policy Studies*, no. 16, pp. 145-187. (in Persian)
8. Salahi, S. & Bhadori Jahromi, A. (2012), Constitutional Constructions of Islamic republic of Iran & Republic of Iraq, A Comparative Study, *Journal of Comparative Law*, no. 2, pp.65-82. (in Persian)
9. Abbasi, B. & Ja'fari, M. (2011), A comparative inquiry to the qualifications of voters and elected in the election system of Iran and Malaysia parliaments, *Journal of Comparative Law*, no. 2, pp. 115-132. (in Persian)
10. Azizi, Sattar, (2015), Minority Protection in International Law, The SD Institute of Law Research & Study, Tehran. (in Persian)
11. Islamic Human Rights Commission of Iran, (2012), Research & Study Affairs, Defining the definition and scope of cultural rights in international human rights measures.
12. Islamic Human Rights Commission of Iran, (2013), Research & Study Affairs, Lingual minorities' rights.
13. Mazhari, Mohammad, (2016), A Consideration in the Process of City and Village Councils in Iran and France, *Journal of Comparative Law*, no. 2, pp.725-752. (in Persian)
14. Alam, Aftab, (2015), «Minority Rights under International Law», *Journal of the Indian Law Institute*, vol. 57, No. 3, pp: 376-400.
15. Burch Elias, Stella, (2010), «Regional Minorities, Immigrants, and Migrants: The Reframing of Minority Language Rights in Europe», *Berkeley Journal of International Law*, vol. 28, No. 1, pp. 261-312.

16. ECMI, (European Centre for Minority Issues), 2013, «Communities in Kosovo: A guidebook for professionals working with communities in Kosovo».
17. Gagliardone, Iginio and Others, (2015), «Countering Online Hate Speech», UNESCO.
18. Jabareen, Yousef T., (2012), «Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples», University of California, Davis, Vol. 18:1, pp. 119-161.
19. Kovačević, Dragana, (2011), «International Minority Protection System», Ethnicity Research Center, Belgrade, pp.1-13.
20. Kugelmann, Dieter, (2007), «The protection of minorities and indigenous peoples respecting cultural diversity», *Max Planck yearbook of united nation law*, vol.11, pp233-263.
21. Kumar Das, Jatindra, (2016), «Human Rights Law and Practice», PHI Learning Pvt. Ltd.
22. Macklem, Patrick, (2008), «Minority Rights in International Law», *International Journal of Constitutional Law*, Vol. 6, Issue 3-4, pp.531-552.
23. Mcgonagle, T., (2008), «Minority Rights and Freedom of Expression: A Dynamic Interface», Ph.D Thesiss, University Of Amsterdam.
24. Mendel, Toby, (2010), «Hate Speech Rules under International Law», Executive Director, Center for Law and Democracy.
25. O'Connell, Rory, (2006), «the Right to Participation of Minorities and Irish Travelers», *Studies in Ethnicity and Nationalism*, Vol. 6, pp2-29.
26. Office of the United Nations High Commissioner for Human Rights (OHCHR), (2010), *Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3)*.
27. Papoutsis, Emilia, (2014), «Minorities under International Law: How protected they are?», *Journal of Social Welfare and Human Rights*, Vol. 2, No. 1, 305-345.
28. Pentassuglia, Gaetano, (2002), «Minorities in International Law, Council of Europe Publishing», Germany.
29. Petričušić, Antonija, (2005), «the Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations», *Croatian International Relations Review*, Vol. 11, No.39/38, pp: 1-23.
30. Thomas White, Benjamin, (2011), *The Emregence of Minorities in Middle East*, Edinburgh University Press.
31. Thornberry, Patrick, (2012), «Some Controversies in the Drafting of the Declaration: A Personal Recollection», presentation delivered in the occasion of the 5th session of the UN forum on minority issues.
32. UN Office of the High Commissioner for Human Rights (OHCHR), (1998), «Minority Rights», Fact Sheet, No.18 (Rev.1)

-
-
33. Vijapur, Abdulrahim P., (2006), « International Protection of Minority Right», *International Studies*, vol. 4, pp: 367-394.
 34. Wheatley, Steven, (2005), *Democracy, Minorities and International Law*, Cambridge University Press.
 35. Yupsanis, Athanasios, (2013), «Article 27 of the ICCPR Revisited», *Hague yearbook of International Law*, vol. 26, pp: 358-409.

Documents

36. Iranian Charter of Civil Rights, 2016.
37. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
38. The International Covenant on Civil and *Political Rights* (ICCPR)
39. Human Rights Committee, General Comment No 23: The Rights of Minorities (Art. 27), UN Doc. CCPR/C /21/Rev.1/Add.5, 8 April 1994.
40. UNESCO's work on endangered languages
41. UNESCO's Recommendation on the Status of Teachers (1966)
42. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (1969).
43. PCIJ doc. Greco-Bulgarian Communities, Advisory Opinion, (1930).

A Comparative Study of the Competent Court and Applicable Law in Civil Liability Caused By Nuclear incidents under International Conventions, Japanese and Iranian Laws

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Received: 2017/07/18 - Accepted: 2018/03/07

Abstract

The expansion of nuclear activities has been accompanied with increased nuclear transboundary risks. One of the legal issues is the determination of the competent court and law. Civil nuclear conventions consider a single competent forum to deal with all actions, that is the court of the country within the territory of which the nuclear incident occurred or the courts of Installation State. The applicable law is to be the provisions of the conventions or national legislation of the competent court. Even though Japan is not a party to any of the international nuclear liability conventions, it has a solid national third party liability legislation on nuclear responsibility according to which, the court of the country where the incident took place has the jurisdiction, and the applicable law is usually the law of the place where the damage has occurred. Since Iran it is not a member of civil nuclear liability conventions and it does not have any relevant domestic law in this field, it has used general rules such as defendant's domicile to determine the competence court and the applicable law, which in many cases will be ineffective. Therefore, the specific legislation or at least membership of the relevant conventions is necessary.

Keywords: Nuclear incidents, Competent court, applicable law, nuclear civil liability conventions.

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References

1. Abraham, Mohit (2014) «Nuclear Liability: A Key Component of the Public Policy Decision to Deploy Nuclear Energy in Southeast Asia», American Academy of Arts and Sciences, available at <http://www.amacad.org/gnf>.
2. Almasi, Najad Ali (2003), Private International Law, Vol. 1, Tehran: Mizan. [Persian]
3. Arfa'niya, Behshid (2016), Private International Law, Vol. 17, Tehran: Behtab. [Persian]
4. Currie, duncan e.J. (2008) «The problems and gaps in the nuclear liability conventions and an analysis of how an actual claim would be brought under the current existing treaty regime in the event of a nuclear accident». Available at www.law.du.edu.
5. Doost Mohammadi, Batool (2016) «Determining the applicable law on the civil liability provisions of the Uniform Rome II and Iranian law», Third Global Conference On Management, Economics, Accounting And Humanities At The Beginning Of Third Millennium, Shiraz University. Available at: https://www.civilica.com/Paper-MEAHBTM03-MEAHBTM03_043.html
6. Gharibeh, Ali (2000) «Competence Court And Applicable Law Of International Liability » , East Azerbaijan and Ardabil bar association, Vol. 1, pp 119-132. [Persian]
7. Herzog, Pascal(2012) «Civil nuclear liability mechanisms to allocate the costs of a civil nuclear incident», Master thesis at the university of ST. GALLEN
8. IAEA International Expert Group on Nuclear Liability(INLEX) (2017) The 1997 Vienna convention on civil liability for nuclear damage and the 1997 convention on supplementary compensation for nuclear damage explanatory texts, Available at www-pub.iaea.org.
9. Jafaritarabar, Hasan (2010) Products Liability, Vol. 1, Tehran: Dadgostar. [Persian]
10. Jaafari Langroudi, Mohammad Jafar (2016), Annotated Civil Code of Iran, Vol. 5, Tehran: Ganje Danesh. [Persian]
11. Katouzian, Naser (2002) Iranian Civil Code in the light of contemporary legal order, Vol.7, Tehran: Mizan. [Persian]
12. KAYIKÇI, Mehmet Suat (2012) «The International Civil Liability Regime for Nuclear Energy: How Would It Respond to a Chernobyl Disaster of 2011?», Available at SSRN: <https://ssrn.com/abstract=2102175>
13. Mafi, Homayoun and Firoozjaee Adabi, Rashid (2014) «The jurisdiction of Iranian courts in the field of international law », Knowledge of Civil Rights, Vol. 6, pp 48-63. [Persian]

14. Mafi, Homayoun and Hosseini Moghaddam , Seyed Hassan (2017) « Competent Court for the Settlement of Disputes Arising from Non-Contractual Obligations in the Iranian and European Law », Comparative Law Review, Vol. 8, No. 1, pp 297-322. [Persian]
15. Matin Daftari, Ahmad (1999) Civil procedure, Vol.1, Tehran: Majd. [Persian]
16. Nahreini, Fridoon (2008) «Contractual And Enforcement Civil Liability In Respect Of Jurisdiction», Ghezavat, Vol.50, pp 48-51. [Persian]
17. Nasiri, Mohammad (2010) Private International Law, Vol.21, Tehran: Agaah. [Persian]
18. Rimšaitė, Laura. (2013) «Civil liability for nuclear damage: comparative analysis of international treaties», Social transformations in contemporary society. Lithuania: Mykolas romeris university.
19. Safai, Seyed Hosein (2015) Issues From Private International Law , Vol. 3, Tehran: Mizan . [Persian]
20. Salehi Zehabi, J (2002), «Civil Liability And The Governing Rules In The Conflict Of Laws, iranian journal of insurance research, Number 67, Pp. 101-130. [Persian]
21. Saldjouqi, Mahmood (2009) Private International Law, Vol. 4, Tehran: Mizan. [Persian]
22. Sands, Philippe and Galizzi, Paolo (1999) «The 1968 Brussels Convention and Liability for Nuclear Damage», Nuclear Law Bulletin, No.64, Available at <https://www.oecd-nea.org> › Nuclear law › Nuclear Law Bulletin.
23. Stoiber, Carlton and [et al...]. (2003). Handbook on nuclear law, IAEA international atomic energy agency.
24. Shi ,Shuai (2010) «Study of Compensation for Nuclear Pollution Damage: A Reflection of the Development of China's Nuclear Power and Related Research », International institute of social studies, Available at <https://thesis.eur.nl> .
25. Tabatabaie Nejad, Seyed Mohammad. (2013) «The challenge of determining the applicable law of civil liability arising from the breach of the rules of competition law with a view to the Europe Union », Judicial salaries views, Number 62, pp 89-112. [Persian]
26. Van Dyke, Jon M. (2010) «The inadequate liability and compensation regime for damage caused by nuclear activities», Williams Richardson school of law. Available at www.gu.se/digitalAssets.
27. Vásquez-Maignan, Ximena (2011) « Fukushima: liability and compensation », NUCLEAR LAW BULLETIN, No. 88, OECD.
28. Vásquez-Maignan, Ximena(2012) «The Japanese nuclear liability regime in the context of the international nuclear liability principles, Japan's Compensation System for Nuclear Damage As Related to the

TEPCO Fukushima Daiichi Nuclear Accident», NUCLEAR ENERGY AGENCY ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD , Available at www.oecd-nea.org/law/fukushima.

29. Nomura, Toyohiro & Hokugo, Taro & Takenaka, Chihiro (2012) «Japan's nuclear liability system, , Japan's Compensation System for Nuclear Damage As Related to the TEPCO Fukushima Daiichi Nuclear Accident», NUCLEAR ENERGY AGENCY ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD , Available at www.oecd-nea.org/law/fukushima.
30. Zhang, Mo (2009), «Party Autonomy in Non-contractual Obligation: Rome II and its Impacts on Choice of Law», available at, <http://heinonline.org>.

Economic Analysis of Law In the Conflict between Legal Modernity and Legal Postmodernity

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Received: 2017/05/08 - Accepted: 2017/10/15

Abstract

There is no doubt that the economic analysis of the law is realistic. The question, however, is whether or not this realism is in conflict with the fundamentalism of legal modernity? If realism, considers interpretation as the will of a concept, economic analysis of law as a theoretical framework for the interpretation of the legal rule, leads to the negation of fundamentalism and to the acceptance of pluralism in validity of the legal rule; as substantial and formal formalism will not be valid. These results denoted the paradigm of legal postmodernity, as a pluralistic one. However, it seems, if that fundamentalism is manifested in spontaneous value, it is a symbol of the interaction of reality and metaphysic. Thus, the economic analysis of the law, based on this type of fundamentalism, is only the resurgence of the modernity as the spontaneous order. Consequently, the interpretation will also be confined to the discovery of meaning, so that information has not fallen in the demise of pluralism. Because the acquisition of economic information requires a minimum of this formalism, the validity of this method of interpretation means the validity of formal formalism.

Keywords: Economic Analysis of Law, Modern Law, Postmodern Law, Reality, Value.

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References

1. Aghaei Thogh, Moslem (2003), «Analysis of ‘Economic Analysis of Law’», In. Comparative Law Review, Vol. 4, n° 2, pp. 1-17, (in Persian)
2. Babaie, Iraj (1386), «The Theoretical Foundations of the Approach to Economic Analysis of Law», In. Legal and political researches, n° 23, pp. 13-60, (in Persian)
3. Badini, Hassan (2003), «The philosophical foundations of the economic approach to law», In. Private Law Studies Quarterly, n° 62, pp. 91-136, (in Persian)
4. Bentham, Jeremy(1980); «Vue générale d’un corps complet de législation», In. Œuvres; T. I., 1^e édition, Bruxelles : Société Belge de Librairie
5. Borgetto, Michel et Lafore, Robert (2000), La république sociale, Contribution à l’étude de la question démocratique en France, 1^e édition, Paris: PUF
6. Cardozo, Benjamin (1921); The Nature of the Judicial Process, 1^e édition, New Haven: Yale University Press
7. Chevallier, Jacques (1998), «Vers un droit postmoderne», In. Les transformations de la régulation juridique; Droit et Société, Recherches et Travaux, n 5, p. 21-46
8. Cohen, GeorgeM. (1985), «Posnerian Jurisprudence and Economic Analysis of Law: The View from the Bench», In. University of Pennsylvania Law Review, Vol. 133, pp. 1117-1166
9. Coleman, Jules L. (1980), «Efficiency, Utility, and Wealth Maximization», In. Hofstra Law Review, Vol. 8, 1980, pp. 509-551
10. Comte, Auguste (1929); Système de politique positive; T. I, 5 édition, Paris: Édition Société positiviste
11. Cotterrell, Roger (1992), The Sociology of Law, second edition, London: Butterworths,
12. Dabin, Jean (2007), Le droit subjectif, Réimpression de l’édition 1952, Paris: Dalloz.
13. Deffains, Bruno (2010), Analyse économique du droit et théorie du droit: Perspectives méthodologique, Rapport final de la recherche financée par le GIP, mission droit et justice; Convention de recherche n° 27.10.10.12
14. Duguit, Léon (1911), Le droit social, le droit individuel et les transformations de l’Etat, 2e édition, Paris: Édition Félix Alcan
15. Duguit, Léon (1927), Traité de droit constitutionnel; T. I., La règle de droit et le problème de l’Etat, 3e édition en cinq volumes, Paris: Ancienne librairie Fontemoing
16. Duguit. Léon (1999), Les transformations du droit privé depuis le Code Napoléon, Réimpression de l’édition de Librairie Félix Alcan (1920), Paris: Édition de la Mémoire Du Duguit.
17. Durkheim, Emile (1987); La science sociale et l’action; 2e édition, Paris: Puf,

18. Ebdali, Mehrzad (2000), «The place of morality in the economic analysis of the law», In. *Comparative Law Researches*, 82, Vol. 6, n° 2, pp. 101-126, (in Persian)
19. Fasso, Guido (1976); *Histoire de la philosophie du droit, XIXe et XXe siècle*; traduit de l'italien par Catherine Rouffet, 1e édition, Paris: L.G.D.J.
20. Foucault, Michel (2001), « Qu'est-ce qu'un auteur? », *Dits et Écrits 1954-1988*, Paris: Éditions Gallimard
21. Frydman, Benoit (1998); *Les transformations du droit moderne; Rapport réalisé à la demande de la Fondation Roi Baudouin dans le cadre de la réflexion prospective «Citoyen, Droit, Société»*; Centre de diffusion de la Fondation Roi Baudouin
22. Frydman, Benoit et Guy Haarscher (2002); *Philosophie du droit*; 2e édition, Paris: Dalloz
23. Gény, François (1919), *Méthode d'interprétation et sources en droit privé positif, T. I.*, 2e édition, Paris, L.G.D.J
24. Gjerdingen, Donald H. (1986), «The Politics of the Coase Theorem and Its Relationship to Modern Legal Thought», In. *Buffalo law review*, Vol 35, pp. 871-935
25. Glaudet, Philippe (2004),«Le code Napoléon, fondateur de la Nation française », In. *Répertoire du notariat Defrénois*; n 9, p. 621-632
26. Gurvitch, Georges (1972), *L'idée du droit social*, Réimpression de l'édition 1932 chez Recueil Sirey, Paris : Édition Scientia Verlag
27. Habermas, Jürgen (2003), *L'espace public, Archéologie de la publicité comme dimension constitutive de la société bourgeoise*, Traduit en français par Marc B. de Launay, 6e édition, Paris: Éditions Payot
28. Hayek, Friedrich von (1985); *Droit, législation et liberté*; Traduit en français par Raoul Audouin, T. I. règles et ordre, 2e édition, Paris: Puf
29. Holmes, Oliver W (1909); *The Common Law*; New York: Little Brown
30. Jacques, Ghestin (1993), *Traité de droit civil, La formation du contrat*, 3e édition, Paris: L.G.D.J
31. Jestaz, Philippe (2000), «Jurisprudence et Economie», In. Deffains, Bruno (sous la direction), *L'analyse économique du droit dans les pays de droit civil, Actes du colloque organisé par le Centre de Recherches et de Documentation Economiques de l'Université de Nancy 2, les 28 et 29 juin 2000*, Avec préface de Guy Canivet, 1e édition, Paris: Editions CUJAS, pp. 73-85
32. Katouzian, Naser (2001), *Philosophy of Law, Vol. I*, 2e edition, Tehran: Sherkat Sahami Enteshar (in Persian)
33. Kelsen, Hans (1999), *Théorie pure du droit*, Traduit par Charles Eisenmann, 1e édition, Paris: Bruylant et L.G.D.J.
34. Keyvanfar, Shahram (2011), *The philosophical foundations of the interpretation of the law*, 1e edition, Tehran: Sherkat Sahami Enteshar (in Persian)

-
35. Leff, Arthur A. (1974), «Economic Analysis of Law: Some Realism About Nominalism», In. Virginia Law Review, Vol. 60, pp. 451-482
 36. Lenoble, Jacques (1994), «Crise du juge et transformation nécessaire du droit»; In. La crise du juge (J. Lenoble éd.), Bruxelles/ Paris, story-scientia/L.G.D.J., pp. 139-156
 37. Linell E. Cady (1986); «Hermeneutic and Tradition, The role of the paste in Jurisprudence and theology», In. The Harvard theological review; Vol. 79, n 4, pp. 439-463
 38. Louis Kaplow and Steven Shavelle (2000), Principles of Fairness Versus Human Welfare: On the Evaluation of Legal Policy, Harvard Law School, Law-Econ Discussion Paper No. 277: Cf. http://papers.ssrn.com/paper.taf?abstract_id=224946; 20/03/2017
 39. Mackaay, Ejan, (2000) «L'analyse économique du droit dans les systèmes civilistes», In. Deffains, Bruno (sous la direction), L'analyse économique du droit dans les pays de droit civil, Actes du colloque organisé par le Centre de Recherches et de Documentation Economiques de l'Université de Nancy 2, les 28 et 29 juin 2000, Avec préface de Guy Canivet, 1e édition, Paris: Editions CUJAS, pp. 11-35
 40. Mathis, Klaus (2011), «Consequentialism in Law», In. Law and Philosophy Library, Vol. 98, pp. 3-29
 41. Moballeggi, Ahmad (2002), «Jurisprudential paradigms», Fiqh Review, n 37 and 38, pp. 3-24 (in Persian)
 42. Muir-Watt, Horatia, (2000), «Les forces de résistance à l'analyse économique du droit dans le droit civil», In. Deffains, Bruno (sous la direction), L'analyse économique du droit dans les pays de droit civil, Actes du colloque organisé par le Centre de Recherches et de Documentation Economiques de l'Université de Nancy 2, les 28 et 29 juin 2000, Avec préface de Guy Canivet, 1e édition, Paris: Editions CUJAS, pp. 37-45
 43. Murphy, Jeffery G., and Coleman, Jules L. (1990), Philosophy of Law, An introduction to Jurisprudence, Boulder: Westview Press; Rev edition (December 4, 1989)
 44. Oppetit, Bruno, (1998); Droit et Modernité; 1e édition, Paris: Puf
 45. Pasukanis (E-B.) (1990), La théorie générale du droit et le marxisme, Traduit en français par J-M. Brohm, 2e édition, Paris: EDI
 46. Portalis, Jean-Etienne-Marie (2007); De l'usage et de l'abus de l'esprit philosophique durant le XVIIIe siècle; préface de Joel-Benoît d'Onorio, T. I., reprint de la 3e édition chez Moutardier en 1834, Paris: Dalloz
 47. Posner Richard A.(1975), «The Economic Approach to Law», In. Texas Law Review, Vol. 53, pp. 757-782
 48. Posner, Richard A (2004), The Law and Economics of Contract interpretation, U Chicago Law and Economics, Olin Working. Paper n° 229, pp. 1-51

-
49. Posner, Richard A. (1980), «The Ethical and Political Basis of the Efficiency Norm», In. *Common Law Adjudication*, Hofstra Law Review, Vol. 8, pp. 487-507
 50. Posner, Richard A. (1987), «Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution», In. *Case Western Reserve Law Review*, Volume 37, n 2, pp. 179-217
 51. Posner, Richard A. (1987), «The decline of Law as an Autonomous Discipline: 1962-1987», In. *Harvard Law Review*, Vol 100, 761-780
 52. Posner, Richard A. (1995), *Overcoming Law*, 1e edition, Cambridge: M A, Harvard University Press
 53. Posner, Richard, A. (1979), «Utilitarianism, Economics, and Legal Theory», In. *The Journal of Legal Studies*, Vol 8, n° 1, pp. 103-140
 54. Rosanvallon, Pierre (1992), *La crise de l'Etat-providence*, 3e édition, Paris : Edition du Seuil
 55. Rosenfeld, Michel, (1998), *Just Interpretation, Law Between Ethics and Politics*, Berkeley: University of California Press
 56. Shahabi, Mahdi (2011), «Interaction between substantive rationality and formal rationality in the civil law system of Iran and France, Thinking about theoretical foundations of the formation of the Iranian civil code», In. *Journal of Legal Studies* Vol. 3, n 1 (4), pp. 123-156 (in Persian)
 57. Shahabi, Mahdi (2011), «Justification and denial of the Right: Thoughts on contradiction or interaction of reality and value in legal order», In. *Comparative Law Review (NAMEH-YE MOFID)*, Volume 6 (16), n 2 (82), pp. 43-60 (in Persian)
 58. Shahabi, Mahdi (2011), «The process of socialization of law and its impacts on legal system», *Private Law Studies Quarterly*, Volume 41, n 1, pp. 259-278, (in Persian)
 59. Shahabi, Mahdi (2013), «From modern Law to the postmodern law, Thinking about foundations of evolution of legal order»; *Legal research Review*, n 61, pp. 637-686 (in Persian)
 60. Shahabi, Mahdi (2015), «Contract as natural law (rational) thinking about foundation of the validity of the contractual content in the Iranian and French civil law», In. *Comparative Law Review*, Vol. 6, n 2, pp. 604-626 (in Persian)
 61. Taylor, George H. (1998), «Critical Hermeneutics: The Intertwining of Explanation and Understanding as Exemplified in Legal Analysis», In. *Chicago-Kent Law Review*, Vol. 76, pp. 1101-1123
 62. Troper, Michel (2000), «Une théorie réaliste de l'interprétation», In. *Théories réalistes du droit*, edition Olivier Jouanjan, *Annales de la faculté de droit*, vol. 4, pp. 43-62
 63. Tumonis, Vitalius (2012), «Legal realism and Judicial Decision-Making», In. *Jurisprudence*, 19 (4), pp. 1361-1382
 64. Weber, Max (2007); *Sociologie du droit*; Introduction et traduction par Jacques Grosclaude, 2e édition, Paris: Puf

The Legal Effects of Sex Change on Marriage based on the Islamic Jurisprudence and Common Law

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Received: 2017/12/05 - Accepted: 2017/06/06

Abstract

Soon after the acceptance and legalization of transsexual surgery , transsexuals' stability of marriage turns into a concern for both jurists and judges. Whether their marriage remains stable after surgery is a question which is still left unanswered. In cases when only one of the couples undergoes the surgery, marriage is generally believed to be abrogated, but in other cases when both partners do the surgery simultaneously, there are disagreements in verdicts. Based on the British common law system the transsexual partner is obliged to abrogate the marriage for six months until his or her gender is identified. In the United States however, no ban is imposed on marriage in such cases. The present paper aims to discuss the current ideas in this regard and survey the fact in common law and Islamic perspective.

Keywords: Transsexual , Hermaphrodite , Gender Identity , Gender Recognition Act , Gender Recognition Certificate.

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References

Persian

1. Barikloo, A (Autumn 2004 A), The legal effects of Sex change, Journal of Lecturer in Human Sciences, Vol 8, N3, PP 107-129. (in Persian)
2. Barikloo, A (Winter 2002 B), Legal Conditions of Sex change, Journal of Legal ideas , Vol 1, N5, pp 63-86. (in Persian)
3. Kharrazi, M, (1999), Sex Change, Journal of Jurisprudence Ahl al-Bayt, Vol2, N 23, PP104-147. (in Persian)
4. Shahidi, M, (2014) formation Contracts and commitments, Tenth Edition, Tehran, Hoghooghdan Publisher.(in Persian)
5. Safi Golpaygani, Sh, (2014) , Stifta With Sex change, Section About Stifta, N 1129. (in Persian).
6. Safaee, H; Ghasemzadeh, M, (2014), Persons and persons under Legal incapacity, twenty first Edition, Tehran, Samt publisher. .(in Persian)
7. Katuzin, N, (2011 A), Legal Acts (contracts, unilateral contract), Sixteenth Edition, Tehran, Mizan Publisher. .(in Persian)
8. Katuzin, N,(2007 B) Family Law, Forh Edition, Tehran, Daneshgar Publisher. .(in Persian)
9. Kariminia, M (Spring, 2011 A), Jurisprudence and legal review of sex change, Jornal of Islamic Sciences, Vol1, N3, PP 3-24, (in Persian).
10. Kariminia, M (Winter 2010 B) Effect of Sex change on Reserve marriage, Journal of Medical jurisprudence, Vol2, N 5, PP 121-149 (in persian)
11. Kariminia, M,(Summer 2012 C) Sex change and jurisprudential issues, Journal of Jurisprudence and ijtehad, Second Vol, N 1,PP 151-178, (in persian).
12. Goodarzi, F,(1998) Forensic Medicine, First Edition, Tehran, Einstein Publisher.
13. Makarem Shirazi, N,(2010 A) Treatise for Women, Eighth edition , Qom, Amir Al-Momenin School. Publisher. (in persian).
14. Makarem Shirazi, N (2014 B) New Esftas, First Edition, Qom, Amir Al-Momenin School. Publisher (in Persian)
15. Hashemi, H, (spring and summer 2011) "Allameh Fazlullah and Sex Change from the Perspective of the Qur'an," Qur'anic Studies, Vol 17 , No. 65 & 66, PP 140-117 (in Persian).

Domestic laws

16. Iranian Civil Code, 1307.

Arabic

17. Ansari, M (2002), farayid alosool,, Arabic, 4 vols , Eighth Edition, Qom, Islamic Thought College Publisher
18. Tabrizi, J,(2008), New Esftas, 2 Vols, Qom, First Edition.

19. Al-Jubei al-Amli, Z (Al-Shihid al-Thani) (2008), Legal Topics of Sharh Lome'e, Arabic, Sixth Edition, Tehran, Majd Publishers.
20. Hor Ameli,(1991), Vasaal al Shi'a, 14th volume, Qom, Al-Ubith Institute Publisher.
21. Al-Husseini, S, (2006), Al-Masal al-Tayebeh, Qom, Yas al-Zahra Publisher.
22. Khomeini, R (1998), Tahrir al-Wasila, Arabic, 2 vols, first edition, Qom, Dara Lalam Publisher.
23. Shirazi, N,(2003), Medical sentences (Makarem), in one volume, the publication of Imam Ali bin Abi Talib school, Qom, iran,
24. Fazel Movahedi,M (2007) The sentences of doctors and patients (Fazel), in one volume .
25. Motahari, A, (1982), Documentary Tahrir al-Waslāh (New Questions), 6 volumes, first edition, Qom, Khayyam.
26. Mozaffar, M,(2011), Principles of Jurisprudence, 2 volumes, 11th edition, Qom, Daralfkar Publication's.
27. Momen, M, (1994), The words Sadiide Fei Issues New, First Printing, Qom, Nasr-e-Islami Institute Publisher.
28. Naini, M (1997), Benefits of Principles, 4 vols, Thirteenth Edition, Qom, Nasr-e-Islami Institute Publisher.
29. Al-Najfi, M,(1976), Lavaher Al Kalam, 44 volumes, Beirut, Dar al-Hia'a al-'tar Publisher.
30. Najaf Abadi, H,(2006), Medical sentences (Montazeri), in one volume, Saie publication, Qom, Iran, third Edition.
31. Naraghi, A, (1996) Avayd alayam Fi Qavad alahkam Qom Publications, Islamic Propaganda Office Publisher.

English

32. Audrey C. Stirnitzke, (Spring, 2011) «Transsexuality, Marriage, and the Myth of True Sex»,Arizona Law Review, 53 Ariz. L. Rev. 285, 288-319
33. Albert P. Melone, Allan Karnes, (2008) The American Legal System: Perspectives, Politics, Processes, and Policies, Second Edition.Rowman & Littlefield Publishers.
34. Betty.Cbruck(2004) «No longer ugly Ducklying: the European court of human right recognizes transsexual civil right in Goodwin v U.K and sets one the tone for future United States Reform»Vol 64,number 3, Louisiana Law Review,
35. Julie ,Grenberg,(2006), The Roads Less Travelled: The Problem with Binary Sex Categoric< »In Currah, Paisley; Juang, Richard; Minter, Minter. Transgender Rights Minneapolis: Minnesota University Press.
36. Kogan. S.Tery (2004 «)transsexual ,intersexual ,and same Marriage , ,» vol 18 ,Issue 2 , ,Byu journal of public law,371-418.

37. Margarit, E. Coll, M. D. Oliva, R. Gómez, D. Soler, A. Ballesta, F(2000)«SRY gene transferred to the long arm of the X chromosome in a Y-positive XX true hermaphrodite »,vol 2,American Journal of Medical Genetics, 8-25.
38. Paisley Currah, Richard M. Juang, Shannon Minter,(2006) Transgender Rights, U of second Edition,Minnesota Press Publisher.
39. Paul Mallender, Jane Rayson ,(Oct 2005) ,The Civil Partnership Act 2004: A Practical Guide, First Edition,Cambridge University Press.
40. Sarah Creighton(2001),surgey of intersex,vol 94,number 5 , journal of the royal society of medicine.204-230.
41. Shauna.labman ,(2001)«Transsexual Identitiy and the law »,vol7,no 1, ,review of current law and law reform,1-24.
42. Gilmore,Stephen , Glennon, Lisa, Hayes and Williams'(2014) Family Law, Frist Edition, Oxford University Press.
43. Whittle ,Stephan, ,(2002) respect and Equality: Transsexual And Transgender Rights,vol11,no 5. cavandish publishing limited.

Websites

44. Re Kevin v Attorney-General for the Commonwealth (2001) 165 FLR 404, 409 [18],available at www.genderbridge.org/index.php/get_information/legal/marriage,.2015/09/24
45. Corbett v Corbett ,No S06F0328 , available: at:www.law.cf.ac.uk/clr/networks/irsncd70.html[1970]2ALL,ER,33. :2015/08/10
46. Goodwin Vs,U.K ,ECHR ,2002,Application number 289557/95 , available at:<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60596> ,.2015/11/07
47. ReKevin vs Attorney General for the Commonwealth ,Avaible at: http://www.austlii.edu.au/au/cases/cth/family_ct/2003/94.html :2015/07/04
48. Vankuck V Germany ,ECHR ,2003 ,Application ,Number: 35968/97. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61142> ,.2015/09/14
49. <http://www.lambdalegal.org/know-your-rights/transgender/trans-marriage-law-faq> .At:2015/05/29
50. <http://www.mahtaa.com/?p=382662> , (1392,11,27) .2015/11/20
51. <http://www.mahtaa.com/?p=721>(1391/12/08 .2015/11/20
52. X.Y.Z v U.K ,ECHR ,1997 ,Application Number 27830/93 ,X ,x ,c Available At: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58032>.2015/09/04

Foreign Rules

53. Gender Recognition Act 2004.
54. The Matrimonial Causes Act 1973.
55. The Matrimonial Causes (Northern Ireland) Order 1978.
56. The Divorce (Scotland) Act 1976.
57. California Transgender Family Law 101:2013.

The Effect of Force Majeure on the Scope of Liability in Compulsory Insurance Act of 2016 Compared to Former Laws and General Rules with a Comparative Study in French Law

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Received: 2017/09/17 - Accepted: 2017/12/05

Abstract

In tort law, Force Majeure is considered to be one of the obstacles to civil liability. Accordingly, damage caused by Force Majeure in compulsory insurance Act of 1968 was excluded from insurance coverage and law. In amending the Compulsory Insurance Act of 2008, excluding damage caused by Force Majeure of insurance coverage was removed, and the question is raised as to whether the damage caused by Force Majeure is under the purview of the law or not? In the Compulsory Insurance Act of 2016, this question becomes more important because on the one hand, this law has not mentioned about excluding damage caused by Force Majeure from the, on the other hand, any accident caused by a vehicle because of fortuitous events has placed under the law. To answer this question, we first review the concept of Force Majeure by means of conducting a comparative study in French law and then the effect of Force Majeure in compulsory insurance laws will be compared with the general rules of liability in Iranian and French law.

Keywords: Force Majeure, Causation Relation, Scope of Liability, Insurer, Compulsory Insurance Act of 2016.

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References

1. Aliabadi, I. (1988), Exceptions to the Law on Compulsory Insurance of Cars, Central Iranian Insurance Quarterly, Third Year, No. 1, pp. 25-28. (in Persian)
2. Babaei, I. (2011), Insurance law, Tehran: Samt Publication. (in Persian)
3. Badini, H. (2013), Civil Liability Philosophy, Tehran: Publication Co. (in Persian)
4. ----- and Sha'bani Kdesiri, H. and Radparvar, S. (2012), Pure responsibility, foundations and examples, Journal of Comparative Law Studies, Vol. 3, No. 1, pp. 19-36. (in Persian)
5. Bahrami Ahmadi, H. (2008), Analysis of the Law on Compulsory Insurance of Motor Vehicles for the Third Party, approved in 1347, and the Amendment to this Law, adopted in 2008, Islamic Research Journal, No. 3, pp. 93-118. (in Persian)
6. Cornu, G. (1992), Vocabulaire juridique, 3e éd, Paris: Presses universitaires de France.
7. Farahani, A. and Shirzad, J. and Kashfi, S. (2011), Innovations of the new law on compulsory insurance and its basis, Journal of Law Enforcement, Vol. 13, No. 1, pp. 161-198. (in Persian)
8. Ghabuli Dorafshan, S.M.M. and Rezaoust, V. (2012), The role of external means in civil liability due to accidents involving the driving of motor vehicles based on the latest legislative developments (comparative study of Iranian and French law), Comparative Law Studies, Vol. 3, No. 1, pp. 93-110. (in Persian)
9. Haji Azizi, B. and Gholami, N. (2013), The Position of the Assumption in Civil Responsibility, Journal of Comparative Law Research, Vol. 17, No. 2, pp. 25-45. (in Persian)
10. Imami, S.H. (2003), Civil Rights, Vol. 1, Tehran: Islamiyah Publications .(in Persian)
11. Isanlou, M. (2008), Review and analysis of the law of compulsory insurance, Quarterly Journal of Law, Volume 38, No. 4, pp. 37-56. (in Persian)
12. Jafari Langroudi, M. J. (2002), Expanded in the Terminology of Law, Vol. 3 and 4, Tehran: Ganj Danesh. (in Persian)
13. Katouzin, N. (2011), Non-contractual Obligations; Civil Liability, Vol. 1, Tehran: Tehran University Press. (in Persian)
14. ----- (2012), Non-contractual Obligations; Civil liability, Volume 2, Tehran: Tehran University Press. (in Persian)
15. ----- (2004), Introductory Civil Law Period; Legal Acts, Tehran: Public Joint Stock Company. (in Persian)
16. ----- (2010), Introductory Civil Law Course; Legal Events, Tehran: Public Joint Stock Company. (in Persian)

17. ----- (2011), *Productivity Responsibility*, Tehran: Tehran University Press.
18. Khadem Razavi, Q. and Noee, E. and Mehpouyan, A. (2015), The relationship between causality in responsibility due to recklessness; A comparative look at civil and civil rights in Iran and England, *Private Law Research*, Third Year, No. 10, pp. 43-65. (in Persian)
19. Khodabakhshi, A. (2011), Civil liability arising from driving accidents and its developments in Iranian law, *Journal of Legal Justice*, No. 74, pp. 103-128. (in Persian)
20. Larroumet, C. (2007), *Droit Civil, T. III, les obligations, le contrat, 2e partie, effets*, 6e éd., Paris: Economica.
21. Le Tourneau, P. (2012), *Droit de la Responsabilite et des contrats, Regime d'indemnisation*, Paris: Dalloz
22. Maboudi Neishabouri, R. and Haddad Khodaparast, Ma. (2014), The Civil Criminal Principle of Owners of Motor Vehicle Land Based on the New Compulsory Insurance Act, *Journal of Insurance*, No. 1, pp. 181-200. (in Persian)
23. Malaurie, Ph., Aynès, L. et Stoffel-Munck, Ph. (2009), *Droit Civil, les obligations*, Paris: Defrénois, Lextenso editions, 4th ed
24. Marty, G. and Raynaud, P. (1988), *Droit Civil, les obligations*, 2 ed. Vol. 1, Paris: Sirey.
25. Nazari, I. (2002), Civil liability of accidents caused by accidents, *Journal of Neda Sadegh*, No. 26 and 27, pp. 111-130. (in Persian)
26. Nikbakht, H (1997), Effects of Force Majeure and Exit of the Contract, *International Law Magazine*, No. 21, pp. 95-144. (in Persian)
27. Qasimzadeh, S.M. (2011), *Civil Negotiation Requirements and Contracts*, Tehran: Mizan. (in Persian)
28. Rahpeik, H. (2011), *Civil Liability and Compensation Rights*, Tehran: Khorsandi Publishing. (in Persian)
29. Rahpeik, S. (2011), Civil liability of vehicle owners in accordance with the mandatory insurance law of 1387 compared to the law approved in 1347, *Quarterly Journal of Law*, Vol.41, No. 3, pp. 171-183. (in Persian)
30. Salehi Janali, M. (1993), *Rights of Losses and Third Party Insurance*, Tehran: Tehran University Press, 1993. (in Persian)
31. Safaii, S.H. (2003), *Introductory Civil Law Course; General Rules of Contracts*, Tehran: Mizan. (in Persian)
32. ----- (1985), Force Majeure, *International Law Magazine*, No. 3, pp. 111-179. (in Persian)
33. ----- (1996), *Collection of Civil Rights and Comparative Laws*, Tehran: Mizan. (in Persian)
34. ----- and Rahimi, H. (2010), *Civil liability; Non-contractual requirements*, Tehran: Samt. (in Persian)

-
35. Tahmasbi, J. (2009), Discourse on the Amending the Compulsory Insurance Act of 2008, *Journal of Legal Justice*, No. 68, pp. 31-63. (in Persian)
 36. Tancelin, Maurice (1997), *Des obligations actes ET responsabilités*, Montréal Wilson & Lafleur, 6th ed.
 37. Terré, François & Simler, Philippe & Lequette (2005), Yves, *Droit civil; les obligations*, 9e éd., paris: Dalloz.
 38. van Gerven, Walter & Lever, Jeremy & Larouche, Pierre & Von Bar, Christian & Viney, Geneviève (2000), *Cases, Materials and Text on National, Supranational and International Tort Law*, Oxford: Hart Publishing.
 39. Viney, Geneviève et Jourdain, Patrice (1998), *Les conditions de la responsabilité civile*, The Librairie générale de droit et de jurisprudence, 2th ed.
 40. Yazdanian, A. (2007), *Civil Rights; Civil Code of Civil Responsibility*, Vol. 1, Tehran: Mizan. (in Persian)
 41. *Yearbook of the International Law Commission (1978)*, Force majeure and fortuitous event as circumstances precluding wrongfulness: survey of State practice, international judicial decisions and doctrine Study, prepared by the Secretariat, vol. II, Part One.

A Comparative Study on Specialty Rule in Legal Systems of IRAN and the USA

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Received: 2017/12/31 - Accepted: 2018/02/25

Abstract

Extradition of offenders is a formal process by which a person is surrendered by one State to another State. The requirements of positive substantive for extradition are: dual criminality, extraditable offenses and specialty. According to specialty, a person extradited under a treaty shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than an offence for which extradition was granted or any other offence in respect of which the requested State consents. The philosophy of the existence of the specialty is the protection of the rights of the accused, as well as the providing confidence to the requested State so as to ensure that the requesting State does not abuse its authority. This principle was included in sources of extradition in Legal systems of IRAN, the USA and the United Nations (UN) Model Treaty. Given the philosophy of the existence of this principle in the simultaneous protection of the rights of the accused person and the State, one of the problems with the implementation of the principle is the possibility of abandoning this principle by the state and or the accused; this leads to a question in determining the beneficiaries of this principle. The question is whether the accused person can cite principle despite the withdrawal of the State from it? This paper, by examining documents and case law, concludes that by creating a hierarchy between the interests of the requested State and the accused and prioritizing the interests of the requested State can resolve the conflict between the interests of them, provided that the withdrawal of the requested State does not violate other rights of the accused person.

Keywords: Extradition, Specialty, Model Treaty, United States of America (USA), Iran.

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References

1. Ahmadijad, M. (2012), "Prohibition of the Extradition and Deportation Offenders at the Procedure of the European Court of Human Rights with Considering the European Convention of Human Rights", *Journal of Criminal Law Research*, Volume 1, Issue 1, Autumn, pp 1-32. (In Persian)
2. Ardebili, M. A. (2003), *Matual Assistance in Criminal Matters and Extradition with Emphasis on Drug -Related Offences*, First Edition, Tehran: Mizan publication. (In Persian)
3. Pour Zulfiqar, S. Kalantari, K. (2015), *Prohibition of the Extradition in Iranian Law and International Law*, International conference on research approaches in humanities and management.
4. Khaleghi, A. (2005), "European Arrest Warrant and its Impact on Extradition Law in the European Union", *Journal of Legal Research*, Volume 4, Issue 7, pp 13-28. (In Persian)
5. Shariat Bagheri, M. J. (2014), "Ratification of International Judicial Agreement in Iran; Problems and Solutions", *Judicial Law Views Quarterly*, Volume 19, No. 66, pp 39-74. (In Persian)
6. Ali Abadi, A. (1973), *Criminal law*, Volume III, Tehran: Publications of Bank Melli Iran .(In Persian)
7. Abbasi, M. (1993), *Extradition of Offenders*, Tehran: Ganj Danesh publication. (In Persian)
8. Fatemi Shariat Panahi, S. K. (1971), *Extradition of Offenders*, Second Edition, Qom: Publications of University of judicial sciences and administrative services. .(In Persian)
9. Mohseni, M. (2003), *General Criminal Law*, Volume I, Tehran: Ganj Danesh publication. (In Persian)
10. Iran Extradition Act, 4 March 1961. <http://rc.majlis.ir/fa/law/show/95205> >. 2/25/2018. (In Persian)
11. Agreement on extradition of offenders between the Islamic Republic of Iran and the Republic of Uzbekistan, 18 January, 2003. <http://rc.majlis.ir/fa/law/show/93879>>.2/25/2018. (In Persian)
12. Agreement on extradition of offenders between the Islamic Republic of Iran and Republic of Belarus, 9 May 2012. <http://rc.majlis.ir/fa/law/show/828431>>.2/25/2018. (In Persian)
13. Agreement on Legal Assistance in Civil and Criminal Matters between the Islamic Republic of Iran and Bosnia and Herzegovina, 9 May 2012. <http://rc.majlis.ir/fa/law/show/828419>>.2/25/2018. (In Persian)
14. The extradition treaty between the Islamic Republic of Iran and the Republic of Korea, 8 May, 2017. <http://rc.majlis.ir/fa/law/show/1027663>>.2/25/2015. (In Persian)

15. The extradition treaty between the Government of the Islamic Republic of Iran and the People's Republic of China, 20 September, 2014. <http://rc.majlis.ir/fa/law/show/952080>>.2/25/2015. (In Persian)
16. Agreement on extradition of offenders between the Islamic Republic of Iran and the United Arab Emirates, 23 January, 2011. <http://rc.majlis.ir/fa/law/show/790294>>.2/25/2015. (In Persian)
17. Agreement on extradition of offenders between the Islamic Republic of Iran and the Republic of Cyprus 13 April, 2015. <http://rc.majlis.ir/fa/law/show/960787>>.2/25/2015. (In Persian)
18. The treaty between the Islamic Republic of Iran and the Republic of Indonesia on the extradition of offenders, 10 July, 2017. <http://rc.majlis.ir/fa/law/show/1028212>>.2/25/2015. (In Persian)
19. Agreement on extradition of offenders between Iran and France, 13 December, 1966. <http://rc.majlis.ir/fa/law/show/95013>>.2/25/2018. (In Persian)
20. Agreement on extradition of offenders between Iran and Pakistan, 16 April, 1960. <http://rc.majlis.ir/fa/law/show/95096>>.2/25/2018. (In Persian)
21. The Bill on International Judicial Cooperation in Criminal Matters in Iranian Parliament (Not Final Approval) (In Persian)
22. Agrawala, S. K. (1965) *International law: Indian courts and legislature*, New York: Oceana Publications.
23. Bassiouni, M. C. (2014) *International extradition: United States law and practice*, Sixth Edition, New York: Oxford University Press.
24. Garcia, M. J., Doyle, Charles (2010) "Extradition to and from the United States: Overview of the law and Recent Treaties", Congressional Research Service DIANE Publishing.
25. Iraola, R. (2008) "The Doctrine of Specialty and Federal Criminal Prosecutions", *Valparaiso University Law Review*, Vol. 43, No. 1, 89-112.
26. Germany International Extradition Treaty with the United States, August 29, (1980)
27. Model Treaty on Extradition, 14 December (1990)
28. The European Union convention on simplified extradition procedure, 10 March 1995
29. Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters, 8 December (2002)
30. Federal Rules of Criminal Procedure, https://www.law.cornell.edu/rules/frcrmp/rule_12>.2017/12/19.

Issuing and Executing of the US Courts Judgments against the Assets of the Central Bank of Iran from the Perspective of International Law and the US Law

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Received: 2017/12/14 - Accepted: 2018/02/03

Abstract

In April 20, 2016 the Supreme Court of the United States confirmed the execution of the US Courts judgments in Case of Peterson et al against assets of the Central Bank of Iran. The Supreme Court held that the execution of judgments against assets of the Central Bank is not in contradiction with the Principle of Separation of Powers set out in the US Constitution. This judgment which reflects the position of the highest court in the United States with respect to the immunity of Central banks and its property would affect the judgments of inferior courts in the United States. Up until 2012 the Central Bank of Iran and its property was immune under American Law. In that year, the US Congress adopted Iran Threat Reduction and Syrian Human Rights Act by which the assets of Central Bank of Iran were blocked and allowed the American judgment creditors to enforce the Judgments against the Government of Iran from assets of Central Bank of Iran. The measure of Congress in adoption of the Act and consequently the execution of judgments against assets of Central Bank of Iran are without merit. Under Customary International Law, Central Banks and their properties are having immunity and the properties cannot be subject to the execution of judgments which are issued against States.

Keywords: State Immunity, the Central Bank of Iran, the US Foreign State Immunity Act, Execution of Judgments, US Courts Judgments.

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References**A) Books & Articles**

1. Ansari Moein, P. (2011) *Immunity of States and Their Properties*, 1th ed., Tehran, Mizan Publication. (in Persian)
2. Abdollahi, M and Shafea, M. Sh. (2008) *States Immunity in International Law*, 2nd ed., Tehran, Presidency Publication.(in Persian)
3. Bankas, E. K. (2005) *The State Immunity controversy in International Law: Private Suits against Sovereign States in Domestic Courts*, 1st ed., Berlin: Springer
4. Blair, W. (1998) "The Legal Status of Central Bank Investment under English Law", *Cambridge Law Journal*, Vol. 57, PP. 374-390.
5. Carl, B. M (1979) "Foreign Sovereigns in American Courts; the United States Foreign Sovereign Immunities Act in Practice", *Southwestern Law Journal*, Vol. 33, PP. 1009-1030.
6. Habibi Majandeh, M. & et.al., "Critical Study of The US Practice relating to Breach of State Immunity in Light of Public International Law and 2012 Case of ICJ", *International Law Journal*, vol. 51. PP.67-96 (in Persian)
7. Harris, D. J (2005) *Cases and Materials on International Law*, sixth ed., London: Sweet & Maxwell.
8. Kadkhodaei, A. and Daei A.(2011) "Violability of Iran's Immunity before the US Courts", *International Law Journal*, vol. 43, PP. 13-38 (in Persian)
9. O'Connell, D. P (1970) *International Law*, vol. II, 2nd ed., London: Stevens and Sons.
10. Schreuer, Ch. H (1995) *State Immunity: Some Recent Developments*, Cambridge: Grotious Publications Ltd.
11. Sinclair, I. (1980) "The Law of Sovereign Immunity: Recent Developments", 167 *Recueil des Cours: Collected Courses of the Hague Academy of International Law*, Vol. 167, PP. 113-138.
12. Sonorajah, M, (1982) "Problems in Applying the Restrictive Theory of Sovereign Immunity", *International & Comparative Law Quarterly*, Vol. 31, PP. 661-678.
13. Tadayoni, A. and Kazerouni, SM. (2017) "The Comparative Study on State Immunity under Iranian and American Laws in Light of the Attachment of 2 billion Dollars of Iranian Assets", *Comparative Law Review*, vol. 7, Issue 2, PP. 461-491 (in Persian).
14. Yang, Xiaodong (2012) *State Immunity in International Law*, 1st ed., New York, Cambridge: Cambridge University Press.

B) Cases

15. *The Schooner Exchange v McFaddon et al.* (1812) 7 Cranch.
16. *Trendtex v. Central Bank of Nigeria* (1977) Q.B.560.

17. Republic of Mexico v. Hoffman (1943) 324 US 30.
18. Alfred Dunhill of London Inc. v. Republic of Cuba (1976) 425 US 682.
19. Bank Markazi, the Central Bank of Iran v. Deborah D. Peterson, et al. Case No. 10 Civ. 4518(BSJ) (GWG).
20. Borizzi Brothers v. Steamship Pesaro (1926) 271 US 562.
21. Victory Transport Inc. v. Comisona General de Abastecimientos y transportes (1964) 336 F. 2d 354 2nd Civ.
22. EM v. Argentina, US, 473 F.3d 463, 473 (Second Circuit, 2007).

C) International Documents

23. United Nations Convention on Jurisdictional Immunities of States and Their Property, 2 December 2004, UN Doc A/RES/59/38, Annex (16 December 2004).
24. US Foreign Sovereign Immunities Act (FSIA) 1976; Public Law. No. 94-583.
25. UK State Immunity Act 1978; available at: <https://www.legislation.gov.uk/ukpga/1978/33> (Last visit on 15/1/ 2018).
26. Canada State Immunity Act 1985; available at: <http://www.laws-lois.justice.gc.ca/eng/acts/S-18> (Last visit on 20/1/2018).
27. ICJ Advisory Opinion on Immunities from Legal Process of a Special Rapporteur of the Commission on Human Rights, 10 August 1998 (www.icj-cij.org/docket/index) (last visit on 27/1/2018).
28. ICJ Advisory Opinion on Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France) Judgment of 4 June 2008, ICJ Reports 2008; (www.icj-cij.org/docket/index) (Last visit on 27/1/2018).
29. United States Diplomatic and Consular Staff in Tehran (US v Iran) [1980] ICJ Rep.
30. Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening) Judgment of 3 February 2012(<http://www.icj-cij.org/docket/files/143/16883.pdf>)> (Last visit on 27/1/2018))
31. The Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 UST, 3227, 500 UNTS 95.
32. The Vienna Convention on Consular Relations, Apr. 24, 1963, 21 UST 77, 596 UNTS 261.
33. The General Convention on Privileges and Immunities of the United Nations, Apr. 13, 1946, 21 UST 1418, 1 UNTS.
34. Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat 1214.
35. Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158.
36. Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Iran`s Application Instituting Proceedings, 14 June 2016, p. 17(<http://www.icj-cij.org/docket/files>) (last visit on 27/1/2018).

37. US House of Representatives, Report No. 94-1487, 1976.
38. Department of State Bulletin, Vol. 26 (1953).
39. Treaty of Amity Economic Relations and Consular Rights between the United States and Iran, 15 August 1955, 284 U.N.T.S. 93 (entered into force 16 June 1957).

Autonomic Nullity-Appeal in French Law

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Received: 2017/10/03 - Accepted: 2018/02/24

Abstract

One of the most important concerns over judicial systems around the world is guaranteeing the conformity of definitive judgments with law and legal principles. In French law, despite the fact that the appeal in Cassation Court (*pourvoi en cassation*) is widely accepted, the jurisprudence does not stop in this phase; in all cases where ordinary or extra-ordinary ways of appeal are abolished by the law, in cases of the *ultra virus* actions of the judicial authorities, the parties could resort to autonomic appeal. This appeal is created by the French jurisprudence. Taking into account the restricted domain of appeal in the Supreme Court in Iranian Law, especially in civil matters, it is necessary to consider the mechanism of other legal systems in respect of controlling the correspondence of definitive judgments with law and legal principles. For these reasons, the domain and conditions of autonomic nullity-appeal in French Law have been studied in this Article.

Keywords: Nullity-appeal, definitive judgments, *Ultra virus* actions.

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References**A. Books**

1. Callé, Pierre et Dargent, Laurent (2017), Code de procédure Civile, Paris, Dalloz.
2. Center of Judiciary Power of IRI (2014), Cases and Material of Court of Appeal of Tehran Providence (January of 2013), Tehran, Publication of Judiciary Power of IRI.
3. Center of Judiciary Power of IRI (2015), Cases and Material of Court of Appeal of Tehran Providence (Summer of 2013), Tehran, Publication of Judiciary Power of IRI.
4. Center of Judiciary Power of IRI (2015), Cases and Material of Supreme Court of IRI (2013), Tehran, Publication of Judiciary Power of IRI.
5. Cornu, Gérard (1996), Vocabulaire juridique, Paris, Press universitaire de France.
6. De Leval, George (2005), Eléments de procédure civil, Bruxelles, Larcier.
7. Guinchard, Serge et Chainais, Cécile et Ferrand, Frédérique (2014), Procédure civile: Droit interne et droit de l'Union européen, 32^e éd., Dalloz, Paris.
8. Guinchard, Serge, Chainais, Cécil et *al.* (2015), Droit processuel, Droits fondamentaux du procès, 8^e éd., Paris, Dalloz.
9. Héron, Jacques et Le Bars, Thierry (2015), Droit judiciaire privé, LGDJ, Paris.
10. Larguier, Jean et Conte, Philipe et Blanchard, Christophe (2010), Droit judiciaire privé: procédure civile, 20^e éd., Dalloz, Paris.
11. Shams, Abdollah (2005), Civil Procedure Law, vol. 3, Tehran, Derak Publications.
12. Supiot, Alain (1987), Droit du travail, les juridictions du travail, tome 9, Paris, Dalloz.
13. Terré, François et Simler, Philippe et Lequette, Yves (2005), Les obligations, Dalloz, Paris.
14. Waline, Marcel (1927), La notion judiciaire de l'excès de pouvoir: l'excès de pouvoirs du juge, Paris, Dalloz.

B. Articles

15. Charuault, Christian (2006), L'excès de pouvoir, Mélanges Ph. Simler, Dalloz-Litec, pp. 1-9.
16. Delpech, Xavier (2014), Recours-nullité contre un jugement interprétatif rendu en matière de procédure collective, Actualité Dalloz, 28 mai, pp. 1-6.
17. Fricero, Natali,(1998), L'excès de pouvoir en procédure civile, Revue générale des procédures, no1, janvier-mars 1998, pp. 17-44.

-
18. Gerbay, Phillipe (2011), Les effets de l'appelle-nullité: un choix à pile ou face? Mélanges D. Tricot, Dalloz et Litec, 86-90.
 19. Guinchard, Serge (1996), Le second degré de juridiction, XXe anniversaire de la cour d'appel de Versail, 22 mai 1996, Gaz. Pal., pp. 1004-1016.
 20. Guinchard, Serge (1998), Le droit à un procès équitable; droit fondamental? AJDA, no spécial, Juillet-août, 34-46.
 21. Karimi, Abbas and Shokoohizadeh, Reza (2009), Exclusive Competence, Nameye Mofid, 15 year, no 73, pp. 47-62.
 22. Ladant, Catedrine (2017), Arrêt de chambre mixte du 7 juillet 2017, no 1525651, Cour de cassation, pp. 22-30.
 23. Perdiau, André (2002), Existe-t-il des pouvoirs-nullité?, Recueil Dalloz, 2002, chronique, pp. 1993-1995.
 24. Santa-Croce, Michel (1999), De la limitation des voies de recours à la delimitation de l'excès de pouvoir, Mélanges M. Jeantin, Dalloz, pp. 467-480.
 25. Sommer, Jean-Michel (2011), excès de pouvoir du juge dans la jurisprudence de la cour de cassation 1990-2010, La réforme de la procédure d'appel, dir. L. Cadier et D. Loriferne, IRJS éditions, pp. 1-8.

The Parties' Bringing Changes in Action and Litigation (Comparative Study)

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Received: 2017/11/16 - Accepted: 2018/01/18

Abstract

To whom belongs an action? Only complainant? Or defendant may also have his share on it? So called expression in civil procedure "action belongs to the parties" shows this practical and legal reality that each party can do some acts on civil litigation such as choosing the action and freedom in that work, transfer of action, and freedom of defense. Action becomes in some cases common things of the parties. This time called and "time of decision". Sometimes disputing parties can do their modification to the procedure and not to litigation. Where each party do some modification to litigation such as consenting to conciliation or arbitration or they do some modification in litigation by filling incident action. Those acts need consent or acceptance of defendant. In the other words, when each party do some modification to the litigation such as consenting to conciliation or arbitration or they do some modification in litigation by filling incident action, those acts need consent or acceptance of the defendant. It seems that this limit of ownership does not permits claimant to withdraw action in case of disagreement with the judgments.

Keywords: Ownership, modification of litigation, Withdrawal of legal action, Termination, Whole Withdrawal.

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References

1. *Appeal Court of Tehran Judgments 2013*, (2015), Judicairy Research Institute, (in Persian)
2. Borojerdi Abdoh, M. (2002), *Judicial Principles, Extracted from Supreme Court Judgments*, Roham Edition .(in Persian)
- Borojerdi Abdoh, M. (2014), *Islamic Law Resources and Principles*, University of Tehran Edition. (in Persian)
3. Cadiet, L., (2014), *Code de procédure civile*, Paris, Litec.
4. Cadiet, L., et Emmanuel JEULAND, (2016), *Droit judiciaire privé*, Paris, Litec, 9e éd.
5. Cornu, Gérard, (2007), *Vocabulaire juridique*, Paris, PUF / Quadrige, 7e éd.
6. Ghamami, M., Mohseni, H., (2011), *Transnational Civil Procedure*, Enteshar Co. Publication, (in Persian)
7. Ghamami, M., Mohseni, H., (2012), *Principle of Party Autonomy in Civil Litigation & Its Exceptions*, Journal of Law Quarterly, No. 1, Year 42, pp. 201-216. (in Persian)
8. Helli, A., (1993), *The Way of Islamic Law*, Translated to Persian by A. Yazdi, By Essay of M. T. Daneshpajooch, Vol. 4, University of Tehran Edition. (in Persian)
9. Jafari Langueroudi, M.J. (2002), *Islamic Science Encyclopedia*, Guanje Danesh Liberary, 3rd Edition .(in Persian)
10. Jauerning, O., Burkhard HESS, (2011), *Zivilprozessrecht*, München, C. H. Beck.
11. Khodabakhshi, A. (2011), *Islamic Law Foundation of Civil Procedure*, Enteshar Co. Publication, (in Persian)
12. Khodabakhshi, A. (2014), *Law of Civil Judgment Enforcement*, Enteshar Co. Publication, (in Persian)
13. Maraghi, M., *Titles of Islamic Law*, Islamic Publication Institute, vol. 2, (in Arabic)
14. Matindaftari, A. (2000), *Civil and Commercial Procedure*, Majd Publication, (in Persian)
15. Mohammadi, A., *Islamic Jurisprudence*, University of Tehran Edition. (in Persian)
16. Mohseni, H. (2012), *Relation between Incident Actions and Principal Actions, Dependence or not*, in: *Collected Cases*, Editor in Chief: Professor A. Naser Katouzian, Jungle Publication, (in Persian)
17. Mohseni, H. (2017), *Counterclaim*, Legal Researches, No. 73, pp. 167-198, (in Persian)
18. Mohseni, H. (2017), *Description of Judgment from the Perspective of Reviewability (Appeal)*, *Comparative Law Review*, Vol. 8, No. 1, pp. 323-242, (in Persian)

-
19. Mohseni, Hassan, (2012), *Civil Procedure of France*, vol. 1, introduction by Loïc Cadiet and Abbas Karimi, Tehran, Enteshar Co., (in Persian).
 20. Mohseni, H., (2014), *Organizing of Civil Procedure*, Preface by Nasser Katouzian, Enteshar Co., (in Persian).
 21. Mohseni, H., (2015), *Civil Procedure of France*, vol. 2, introduction by Loïc Cadiet and Majid Ghamami, Tehran, Enteshar Co., (in Persian).
 22. Mohseni, S., Maboudi Neishabouri, R., Moussavi Taghiabadi, S. J., *The Notion of First Audience of Litigation*, *Legal Studies*, Vol. 8, No. 3, pp. 117-133. (in Persian)
 23. Shams. A. (2008), *Civil Procedure*, Derak Publication, Vol. 2, 20th Edition. (in Persian)
 24. Shams. A. (2008), *Civil Procedure*, Derak Publication, Vol. 3, 15th Edition. (in Persian)
 25. Shams. A. (2009), *Civil Procedure*, Derak Publication, Vol. 1, 21st Edition. (in Persian)
 26. Sngueladji, M. (2005), *Adjudication in Islamic Law*, University of Tehran Edition. (in Persian)
 27. Strickler, Y., (2010), "Désistement", in : *Répertoire de procédure civile* Dalloz, Paris, Dalloz.
 28. Vahedi, J., (1990), *Counterclaim*, *Legal & Judicial Journal of Ministry of Justice*, pp. 6-21 . (in Persian)
 29. Vahedi, J., (1997), *First Audience of Litigation and its Specifications*, *Journal of Law Quarterly*, No. 1, Year 38, pp. 67-84. (in Persian)

Theoretical Basis of the Exercise of the Fundamental Rights in Contract Law

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Received: 2017/08/12 - Accepted: 2018/01/20

Abstract

Traditionally, fundamental rights were considered as an instrument for protecting citizens against government, and contract law was considered as a regulating instrument for private relations, without influence of fundamental rights and concepts of public law. This traditional idea has become less significant in recent years and fundamental rights have been influencing private law. So that, courts interfere in contractual relations by referring to fundamental rights. This study investigates theoretical principles of effect of fundamental rights on contractual relations. A descriptive analytical approach is adopted in this study. Results indicate that fundamental rights have been treated as superior rights based on which other rights are interpreted and exercised. In other words, fundamental rights are inviolable principles, both in private law and public law, and the government is required to support these rights in entire its law system. On the other hand, fundamental rights are considered as instruments to protect the weak party in a contract and realization of social justice. In the Iranian civil law, in accordance with the constitution and fundamental rights guaranteed therein, as well as the rule of law of these rights, private individuals can not violate fundamental rights in their contractual relationships and Article 959 of the Civil Code also permits the implementation of fundamental rights in contractual relationships.

Keywords: Constitutional Law, Contractual relationships, Private Law, Justice.

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References

1. Mallory, Ph., (2004), *Legal Thoughts*, Translation by Morteza Kalantariyan, Ageh Public.
2. Azari, h., Tabatabai Hesar, n. (2017), *The Iranian Legal System Challenges regarding Accession to the Human Rights Treaties from the Perspective of International Law*, *Journal of Comparative Law Studies*, Vol 8, no.1, pp. 1-24.
3. Azmayesh, A., (1973), "The issue of conflict with the law in Iran's law", *Journal of Faculty of Law and Political Science, University of Tehran*, Vol 10, no 1, p p. 1 - 18.
4. Bahrul'alum, M., (1981), *Bulih al-Faghih, Description of Muhammad Taghi al-Bahr al-ulum*, Vol I, Maktabeh al-Sadeq Public.
5. Barak, A., (2001), *Constitutional Human Rights and Private Law*, in D Friedman and D Barak-Erez (eds), *Human Rights in Private Law*, Oxford: Hart Publishing.
6. Barkhuysen, T., Van Emmerik, M., (2006), *Constitutionalisation of Private law: The European Convention on Human Rights Perspective*, in T. Barkhuysen and S. D. Lindenbergh (eds), *Constitutionalisation of Private Law*, Leiden: Nijhoff.
7. Caumes, C., (2010), *L'interperetation du Contrat Auregard des Droits Fondamentaux, pour obtenir le grade de docteur en droit de l'Université d'Avignon et des pays de Vaucluse*, le 25.
8. Cherednychenko, O., (2007), *Fundamental Rights, Contract Law and the Protection of the Weaker Party*, European Law pub, Munich.
9. Ciacchi A. C., (2014), *European Fundamental Rights, Private Law, and Judicial Governance*, Hans-Wolfgang Micklitz (ed.), *Constitutionalization of European private law*, Oxford: Oxford University Press.
10. Collins, H., (2011), *The Impact of Human Rights Law on Contract Law in Europe*, *European Business Law Review*, Forthcoming University of Cambridge Faculty of Law Research Paper No. 13, Available at: http://papers.ssrn.com/sol3/papers.com?abstract_id=1837429.> accessed 18 October 2013.
11. Collins, H., (2012), *On the (In)compatibility of Human Rights Discourse and Private Law*, LSE Law, Society and Economy Working Papers, No.7, Law, Available at: www.lse.ac.uk/collections/law/wps/wps.htm.
12. Dawkin, R., (2008), *Taking Rights Seriously*, the translation of the firmly Mohammad, in the firmament of Muhammad, the right and interest (articles in the philosophy of law, philosophy of the right and philosophy of value), Tarheh no Public, Third Edition.
13. Dorn, J. A., (1981), *Law and Liberty: A Comparison of Hayek and Bastiat*, the *Journal of Libertarian Studies*. Vol. V. No. 4.

14. Dworkin, R., (1978), *Taking Right Seriously*, Harvard University Press.
15. Engle, E., (2009), *Third Party Effect of Fundamental Rights (Drittwirkung)*, *Hanse Law Review (Hanse LR)*, Vol. 5, No. 2.
16. Esfahani, M., H., (1986), *Res. Ph. Rāgh al-Haq and al-Hikam*, Anwar al-Hadi public.
17. Freedon, M., (1996), *Ideologies and Political Theory*, Clarendon Press, Oxford.
18. Georgian Azandarian, A. A., (2004), "The Concept and Fundamentals of Fundamental Rights", *Journal of Constitutional Law*, Vol. 2, No. 2, pp. 8-26.
19. Ghanavati, J.; Gawar, H., (2011), "Privacy, Right or Judgment", *Journal of Islamic Law*, No. 31, pp. 7-32.
20. Hashemi, S., (2011), *Basic Laws and Political Structures*, First Edition, Mizan Publishing.
21. Hayek, F. A., (2005), *The Road to Serfdom*, Routledge Classics, 5ed, London and New York
22. Jafari Langroudi, M. J., (1995), *Intention-Inheritance*, Fourth Edition, Tehran University Public.
23. Jafari-Tabar, H., (2004), *Philosophical Foundations of Legal Interpretation*, Sheketeh Sehami Enteshar Public.
24. Javadi Amoli, A., (2010), *Philosophy of Human Rights*, Sixth Edition, Asra Publishing.
25. Katouzian, N., (2004), *Elementary Civil Rights Course, Lessons Learned, Wills, Inheritance*, Fourth Edition, Mizan Public.
26. Katouzian, N., (2011), *Introduction Law of Science*, Sheketeh Sehami Enteshar Public, 78 Editions.
27. Kennedy, D. (1997), *A Critique of Adjudication*, *Osgoode Hall Law Journal*, Volume 35, No 2, p. 179-227.
28. Kennedy, D., (2002), *The Political Stakes in Merely Technical Issues of Contract law*, *European Review of Private Law*, no 1, p 7-28.
29. Keyvanfar, Sh., (2011), *the Philosophical Foundations of the Interpretation of Law*, Sheketeh Sehami Enteshar Public.
30. Kumm, M., (2006), *who is Afraid of the Total Constitution? Constitutional Rights as Principles and the Constitutionalization of Private Law*, *German Law Journal*, Vol. 07, No. 04,p 341-370.
31. Mak, C., (2007), *Fundamental Rights in European Contract Law*, Kluwer Law International.
32. Molaei, Y., Shoaraian, I., (2014), "Human Rights Influence in the Law of Contracts in the Light of European Judicial Procedure", *Quarterly Journal of Public Law Research*, Vol. 15, No. 42, pp. 173-190.
33. Motahari, M., (2002), *Women's Rights in Islam*, Sadra Public.
34. Parvin, Kh., (2015), " A survey on constitutional justice ", *Journal of Comparative Law Studies*, Vol 6, N. 1, pp. 61-83.

35. Ribeiro, G. A., (2012), Direct and indirect effects of fundamental rights, [http://www.wzb.eu/sites/default/files/veranstaltungen/goncalo-de-almeida-ribeiro-direct - and-indirect-effects-of-fundamental-rights/ribeiro direct and indirect effects of fundamental rights.pdf](http://www.wzb.eu/sites/default/files/veranstaltungen/goncalo-de-almeida-ribeiro-direct-and-indirect-effects-of-fundamental-rights/ribeiro-direct-and-indirect-effects-of-fundamental-rights.pdf).
36. Shahidi, M., (1991), "Human Relations with General Civil Law and the Right to Enforce Law", *Legal Research*, No. 8, pp. 133-150.
37. Shahidi, M., (2005), *Inheritance*, Fifth Edition, Majd Public.
38. Smits, J.,(2006), 'Private Law and Fundamental Rights: A Sceptical View', in T Barkhuysen and S Lindenbergh (eds), *Constitutionalisation of Private Law*, Leiden/Boston: Martinus Nijhoff.
39. Study Group on Social Justice in European Private Law, (2004), *Social Justice in European Contract Law: a Manifesto*, *European Law Journal*, Vol 10, No. 6, p. 653–674..
40. Taghizzadeh, J., (2007), "The Issue of Constitutionalisation of the Legal Order", *Journal of Legal Research*, Vol. 6, No. 11, pp. 129-162.
41. Wadham, J., & Mountfield, H. & Edmundson, A., (2003), *Blackstone's Guide to the Human Rights Act 1998*, 3ed, Oxford University Press.
42. Waldron, J., (2002), *Philosophy of the Right, Right and Right*, Mohammad Rasekh, Publishing Plan, First Edition.

Exceptions to Image rights

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Received: 2017/09/24 - Accepted: 2017/11/20

Abstract

People are entitled to their images in a sense that they can decide on whether or not they want to be pictured by others, as well as the publication of the taken pictures from them. Therefore, for the purpose of imaging or publishing a photo, the person's consent must be obtained. However, this right is not absolute. People have the right to become aware of events around them. So, if with an intention of publishing information, an image was taken from other people and it published, then there will be no need to obtain the consent of those persons. For this reason, various legal systems permit the imaging of celebrities or public places. In general, where there is intention as to inform other people, it is permitted to take photo without attaining their consents. However, in such cases, individuals' privacy and dignity must be respected. Also, no one can use another one's image for commercial purposes. In the legal system of Iran, it seems that due to the freedom of the press (principle 24 of the constitution), the importance of public interests and the preference for private interests, the same belief is acceptable.

Keywords: Image, Public interest, Celebrities, Privacy, Human rights.

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References

1. Ansari, b., (2008), law of privacy, samt. (in Persian)
2. Balcarczyk, justyna, (2010), "sports image rights – a comparative overview", collected papers of the faculty of law in split, vol. 47, pp35-45.
3. Biene, daniel, (2005), "celebrity culture, individuality, and right of publicity as a european legal", international review of intellectual property and competition law, volume 36, number 5.
4. Blackshaw, ian, (2005), "protecting sports image rights in europe", business law international, vol 6, no 2, pp. 2-25.
5. Brüggemeier, gert, aurelia colombi ciacchi and patrick o'callaghan, (2010), personality rights in european tort law, cambridge university press, new york.
6. Carnegie, les p., (1998), "privacy and the press: the impact of incorporating the european convention on human rights in the united kingdom", *duke journal of comparative & international law*, vol9, pp.311-345.
7. Cardonsky, lauren b., (2002), "towards a meaningful right of privacy in the united kingdom", b.u. Int'l l.j., no.20.
8. Carty, hazel, (2004), "advertising, publicity rights and english law", intellectual property quarterly, issue 3, pp. 220-240.
9. Claire e. Gorman, (2004), "publicity and privacy rights: evening out the playing field for celebrities and private citizens in the modern game of mass media", *depaul law review*, vol 53, pp.1249-1265.
10. Conteh, abib tejan, (2006), "the right of publicity in sports:athletic and economic competition", *depaul j. Sports l. & contemp. Probs*, vol3.
11. Georgiadis, stathopoulos, (1996.), civil code: article by article interpretation, athens, pp.57-80.
12. Gervais, daniel; martin l. Holmes, (2014), "fame, property, and identity: the scope and purpose of the right of publicity", *fordham intell. Prop. Media & ent. L.j.*, vol81.
13. Gendreau, nordemann and oesch, (1999), copyright and photographs, wiltshire, pp. 251-275.
14. Guido, alpa, the protection of privacy in italian law: case law in a codified legal system, *tulane european& civil lawforum* , vol12, 1997, pp12-25.
15. Hauch, jeanne m., (1994), "protecting private facts in france: the warren & brandeis tort is alive and well and flourishing in paris", *tulane law review*, vol 68, pp.125-150.
16. Helling, anna e., (2005), protection of "persona" in the eu and in the us: a comparative analysis, a thesis submitted to the graduate faculty of the university of georgia, athens, georgia.

17. Jafari, Feizollah, Mehrnaz Mokhtari, (2016), "Comparative study of the nature of celebrities' image rights in commercial advertisements", comparative law review, Volume 7, Issue 2, p511-532. (in Persian)
18. Johnson, James A., (2015), "the right of publicity and the student-athlete", *elon l. Rev.*, no.7.
19. Karakostas, (2000) *personality and press*, athens/komotini, 3rd edn, pp. 58-70.
20. Kadri, Thomas E., (2014), "fumbling the first amendment: the right of publicity goes 2-0 against freedom of expression", *Michigan Law Review*, vol. 112.
21. Klink, J., (2003), "50 years of publicity rights in the United States and the never ending hassle with intellectual property and personality rights in Europe", *i.p.q.*, vol 4, pp377-395.
22. Koo, Andrew, (2006), "right of publicity: the right of publicity fair use doctrine - adopting a better standard", *buff. Intell. Prop. L.j.*, no.4.
23. Koziol H. and A. Warzilek, (2005), *the protection of personality rights against invasions by mass media*, Vienna, New York.
24. Korkeamäki, Oesch and Taipale, (2003), *character merchandising in Europe*, London.
25. Krüger, B., (1982), "right of privacy, right of personality and commercial advertising", *iic*, vol13, pp12-25.
26. Lauterbach, Thorsten, (2005), "us-style 'personality' right in the UK – en route from Strasbourg? 20th Bieta Conference: over-commoditised; over-centralised; over-observed: the new digital legal world?" Queen's University of Belfast.
27. Logeais, Elisabeth, Jean-Baptiste Schroeder, (1998), "the French right of image: an ambiguous concept protecting the human person", *loyola of los angeles entertainment law journal*, vol.18, pp.517-545.
28. Levasseur, Georges, (1994), "protection de la personne, de l'image et de la vie privée (la voie pinale)", *gaz. Pal.*
29. Margolies, Alexander, (1994), *sports figures' right of publicity*, sports law. J. No.1.
30. Marilena Manuc, Liliana, (2012), "the right to self image: the consent given in the case of reproduction of a person in a photograph, film, drawing, on the internet", *contemporary readings in law and social justice*, volume 4(2), pp. 458-461.
31. Martuccelli, S., (1994), "the right of publicity under Italian civil law", *loyola los angeles entertainment law journal*, pp654-680.
32. Martuccelli, Silvio, (1998), "international rights of publicity, the right of publicity under Italian civil law", *loyola of los angeles entertainment law journal*, pp54-70.
33. Massey, Rohan & Tauber, Kathrin (2003), "privacy and personality, politicians and stars", *e-law*, vol.1.

34. McKenna, Mark P., (2005), "the right of publicity and autonomous selfdefinition", *University of Pittsburgh Law Review*, vol. 67.
35. Peptan, Rodica, (2014), "the right to own image in the new Romanian civil code", *Letter and Social Science Series*, issue 2, pp.29-45.
36. Pinckaers, Julius C.S., (1997), "the right of persona: a new intellectual property right for the US and EU", *Copyright World*.
37. Rahmdel M., (2006), "the right to privacy", *Law Quarterly - Journal of Faculty of Law and Political Science*, number 70; p.119 - 146. (in Persian)
38. Reiter, Eric H., (2001), "personality and patrimony: comparative perspectives on the right to one's image", *Tulane Law Review*, vol. 76, pp.673-695.
39. Stapleton, Laura Lee (1999), "the professional athlete's right of publicity", *Marquette Sports Law Review*, volume 10, issue 1.
40. Synodinou, Tatiana, (2014), "image right and copyright law in Europe: divergences and convergences", *Laws*, vol3, pp181-207.
41. Tercier, P., (1984), *Le nouveau droit de la personnalité*, Schulthess.
42. Westkamp, G., (2009), "celebrity rights in the UK after the Human Rights Act: confidentiality, privacy and publicity", in: P. Machnikowski (ed.), *Articles on Civil Law – a tribute to Professor Jan Kosik*, Wrocław.
43. Wassomt, Brian D., (2013), "uncertainty squared: the right of publicity and social media", *Syracuse Law Review*, vol. 63.
44. Wyman, Alex, (2014), "defining the modern right of publicity", *Tex. Rev. Ent. & Sports L.*, no.15.