



## Comparative Analysis of the Theory of Extrajudicial Replacement of the Oblige Infringer in the Law of France and Belgium and the Possibility of its Implementation in the Law of Obligations in Iran

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### Abstract

Fulfillment of the contractual obligation to perform the work by the obligor is the main demand of the obligee from concluding the contract. In the Civil Code of Iran, the general rules for the implementation of the provisions of the contractual obligation to perform the work and the guarantee of its performance are found in the articles related to the verb condition, and the implementation of the obligation to perform the work and the guarantee of its performance is provided for in articles 237 and later of the aforementioned law. Also, the provisions of Article 47 of Iran's Law on the Implementation of Civil Judgments have provided some cases for the contractor to perform the work. All the mentioned articles refer to the assumption that the obligor refuses to fulfill the obligation and the obligee goes to the court and after filing a suitable lawsuit, obtains a ruling to oblige him to perform the work against the obligee, and if the obligee refuses to perform the work after issuing a definitive ruling. At this point in time, the obligee or in other words the convicted person can, in line with the application of Articles 1 and 47 of the Law on the Execution of Civil Judgments, under the supervision of the enforcement officer, perform the work by himself or someone else and at the expense of the obligee, take action to perform the same obligation, which from this The process refers to the previous actions of the undertaker, which were previously analyzed and investigated by other researchers. Previous judicial measures for the implementation of the same obligation by the obligee in violation in the lengthy process mentioned in the mentioned legal articles are not effective, especially because it is possible that after at least one year of erosive process in different judicial courts, the obligee still does not act to fulfill the obligation and inevitably The obligee shall carry out the work in the implementation of the orders and take simultaneous or subsequent action for its costs. The main question of the research is whether, in Iran's law, the obligee can act extrajudicially after the obligee's violation of the performance of the work and perform the work personally or by a third party outside the court, and then proceed to file a claim for the cost. actions taken to do the work (subsequent judicial actions)? If someone undertakes to do something and refuses to do it, in this article, he is referred to as a defaulter (Articles 221 to 227). The traditional way to oblige the



delinquent obligee to do the work is to appeal to the court judge and file a case to issue a final judgment and also to file a case to enforce the judgment, and the delinquent obligee may still refrain from doing the work during the execution of the judgment. Appealing to Article 237 of the Civil Law and Article 47 of the Law on the Execution of Civil Judgments, under the supervision of the judge, the obligor will carry out its execution by himself or someone else and collect its costs from the obligor (prior actions of the judge). This method is erosive and expensive and harmful. The question of the research is whether it is possible to replace the transgressor by the obligee or not. The hypothesis of the research is that due to the absence of an explicit legal obstacle, as well as the capacities available in Anwar's Sharia, until the future amendments of the Iranian Civil Code and specifying the possibility of implementing this theory in a legal article, there is a possibility of extrajudicial replacement of the obligee of the violator by the obligee. And the explanation of the theory called extra-judicial replacement of the obligee of the violator is examined in the modern law of obligations of France and the law of obligations of Belgium. In this idea, the obligee is allowed to act without going to the court or obtaining permission from the judicial authority personally or by a third party to fulfill the obligation and then demand the expenses of fulfilling the obligation from the obligee, which is called "out-of-court replacement". Be remembered. In Article 1222 of the New French Civil Code approved in 2016, the French legislator has provided for the possibility of replacing the obligee of the offender. with the investigations carried out until the future amendments of the Iranian Civil Code and the addition of a legal article after Article 238 of the Iranian Civil Code as an option under the obligation to fulfill the obligation (like the new 2016 French reforms); Arguments in favor provide the capacity to implement the aforementioned theory in the law of Iran's obligations. The attractiveness of the implementation of the replacement theory is the elimination of the erosion process or the previous actions of the judge and its high economic efficiency.

**Keywords:** replacement, extrajudicial, committed, committed, efficiency.

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