



A Comparative Study of Civil Liability in the Abuse of Rights in Iranian and French Law

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Extended Abstract

1. Introduction

One of the controversial issues in civil liability law is the use of the right; In other words, to what extent should the right be implemented? If the implementation of a person's right is harmful for others, what is the duty of the right holder? In order to control the quality of the exercise of the right, it is necessary to specify a criterion through which the abuse of the right can be identified.

The term "abuse of right" is an allusion to the fact that behind the veil of the words of the law, there is a spirit that all the works of the law should be examined according to it. This spirit has been named by the general principles of rights, the call of ethics, and the economic and social goals of creating rights.

Exaggeration in the implementation of the right is not only condemned from the point of view of ethics, but also the science of law does not clearly show it; Because according to reason and logic, the balance of human rights and the extent of their benefits is the best way to converge and achieve the expected justice. However, the realm of using the right has always been a place of controversy, and from time to time, we witness the formation of different legal decisions in this important area of civil responsibility. What is common is that in most of the world's legal writings, such as Iran and France, in line with abuse From the right in law, different legal articles should be enacted, which is clear in Iranian law according to Article 40 of the Constitution and Article 132 of the Civil Code. According to the principle mentioned in Iranian law, abuse of rights has been studied in a broad sense. A study on this matter by comparing it with the laws of France can give legal researchers a more comprehensive view in this regard.

2. Study method

This writing is done in terms of purpose, application, and in terms of the method of collecting materials in a documentary and library form and through the study of laws

and regulations and reliable sources, and the information obtained is descriptive and analytical in order to define and compare the abuse of rights. In the two legal systems of Iran and France, in order to express the conformity of the legal system with the laws of the mentioned countries, their differences are also identified.

3. Findings

Regarding the findings of the research, it can be stated that, even though Article 132 of the Civil Code is the basis of the legislator's view on the ruling on the abuse of rights, the nature of several types of rights has caused the limitation of the rights to be two-sided; It means that sometimes the abuse of the right of guarantee is not enforced and the legislator makes the ruling on the enforcement of the right absolute and sometimes prohibits the fair enforcement of the right; Regarding the scope of the abuse of the right, it should be considered that the theory of abuse of the right applies only to the exercise of the right, while the rule of non-harm is not limited to the customary scope of the exercise of the right, such as the right of ownership or the right of passage.

4. Conclusion

Regarding the results of the research, it can be said that the place of flow of the rule of abuse of the right is the application and implementation of the right; And in Iran's legal system, it is used to deal with the harm caused by legal rulings and to fight against the right to enforce a right that leads to another harm. On the other hand, in French law, in case of abuse in the position of enforcement of the right, the ruling of permission and falsification of the exercise of the right is removed, and it has an equal relationship with the theory of negation of the ruling.

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7. Conflict of interest

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Keywords: civil responsibility, basics, abuse of rights, Iran, France.



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