



Fundamentals of Judicial Adjustment of Contract in Iranian and Turkish Law

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Abstract

One of the most important principles governing contracts is the principle of contract necessity, according to which, after concluding a contract, the parties are required to implement the provisions and obligations foreseen in the contract, and as long as the contract is not dissolved for legal reasons, there is no possibility of violation or refusal of the parties to implement the contractual provisions. Furthermore, the parties are not to unilaterally modify the terms and conditions stipulated in the contract, a rule known as the principle of the immutability of contracts. According to this principle, the party bound by the undertakings contained in the contract ought to complete their undertakings to the letter and has no right to change or request changes to the terms of the contract.

These two principles were taken to be fundamental tenets during the nineteenth and early twentieth centuries, and it is normally not permitted to violate either. However, over time, unforeseen events beyond the contracting parties' control may arise during contract performance, which can upset the contract and imperil its execution. Military law adapts the underlying principle of immutability of contracts so that there is a prospect of amending contractual rights in certain situations.

On the other hand, the doctrine of the necessity of contracts provides security and stability to contractual relations and prevents infringement in the performance of obligations. One exception to this doctrine is a change of circumstances affecting the contract which disturbs its economic balance in such a way that its enforcement becomes unfeasible, costly, and abnormal, thereby not impossible. This is particularly relevant in long-term contracts, when there will in general be a significant time lapse between the contract's completion and its execution.

Notwithstanding that this theory isn't expressly invoked in Iranian legislation, the Turkish legal framework has adopted the scope for the variation of a contract due to the economic crises that have occurred over recent years and their devastating effects, primarily on foreign exchange debt.



The word "adjustment" means to balance, equalize, and divide fairly. In the legal sense, contract adjustment refers to the revision, amendment, or completion of a contract that, for various reasons, has disrupted the balance and equilibrium of the contract between the parties. After the conclusion of the contract, as a result of unforeseen events, the circumstances governing the contract may change and the implementation of the contract may become extremely difficult for one of the parties. In such a situation, the theory of contract adjustment seeks to grant the judge the authority to adapt the contract to the existing situation to provide the possibility of implementing the contract for the party that is facing severe difficulties by amending the contractual obligations.

According to the above discussion, it appears that, as there is no general rule in Iranian law for modification of contracts by the judiciary, it is conceivable that modification of a contract might be accepted according to the rules of hardship and implied conditions, the principle against harm, and Article 40 of the Constitution in situations where performance of an obligation becomes exceedingly difficult due to anticipated events. But there is a pressing need for a general rule in this matter.

In Turkish law, since the latter part of the twentieth century, legal theory and practice in court have emerged with the potential for adjustment of contracts by the courts, based on the theory of the collapse of the foundation of the transaction. The principle of good faith was applied as the prime underlying reason behind such court revisions, facilitating the courts to intervene and remodel contracts struck with unexpected events. A new Law of Obligations came into practice in 2012, and Article 138 of such law adopted the principle of pure impossibility of performance of an obligation, facilitating the courts to intervene and remake contracts and adjust the magnitude of the obligation.

Though differences exist regarding the judicial practice and legal theory of the extent to which this ruling applies, prevailing Turkish law holds that not only is this decision applicable to continuous contracts, but also to single and immediate ones.

In this study, analytically and descriptively, the potential of alteration of a contract and its grounds and consequences is examined according to Turkish as well as Iranian law. Through inquiry into the principles of the theory of change of circumstances, it would appear that in certain contracts the reliance on the implied condition is brought into prominence, whereas in the majority of cases the rule against hardship provides a reasonable basis in the absence of explicit agreement amongst the parties or legal justification for action. According to these principles, a change in circumstances can lead to consequences such as suspension of execution until the ultimate obligation is decided, adjustment of the amount of obligations, and, consequently, the possibility of requesting renegotiation.

In contrast to Iranian law, Turkish law recognizes the theory of change of circumstances in its law of obligations, thereby facilitating the process of contract modification and encountering fewer problems.

Keywords: Principle of Necessity, Change of Situations, Abduction of Accident, Implicit Condition, Hardship clause.



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