

Legal Status of Contract Decomposition in Jurisprudence, Legal System of Iran and International Documents

H. Khalili Pasha¹ | M. Sharafatpeima²

¹ M.A Student, Private Law, Bandar Anzali International Branch, Islamic Azad University, Gilan, Iran

² PhD, Assistant Professor, Bandar Anzali International Branch, Islamic Azad University, Gilan, Iran

To Cite this Article

H. Khalili Pasha and M. Sharafatpeima, "Legal Status of Contract Decomposition in Jurisprudence, Legal System of Iran and International Documents", *International Journal for Modern Trends in Science and Technology*, Vol. 04, Issue 04, April 2018, pp.-31-42.

ABSTRACT

Based on the principle of decomposition of the contract, if it is not realized, violated or exceeded from a part of contracting the warranty of the related execution (invalidity or annulment), it is only applied on the same part of the contract and the remainder of the contract has its validity. In Iranian law, using the jurisprudential documents including the rule of dissolution of the unit contract to numerous contracts and based on the principles of validity and necessity, the commands obtained from induction in civil texts including numerous cases of invalidity and partial annulment, termination, standard of personal purpose and based on the pleasure of the parties of contract, decomposition may be accepted as the principle. In Iranian legal regulations, hurrying in execution of the commitment is not considered unlike delay in its execution. Also in legal letters, the subject has not such record for being analyzed and investigated. But this subject is located in the public and particular studied jurisprudential texts and different theories are expressed about it. Also, in the international documents, some commands are assigned to this matter about the contracts, like: international convention of selling the goods, principles of international commercial contracts and principles of the law of European contracts. In this investigation, using the library method, it is proceeded to study and take notes of the new books, thesis and investigations associated with the legal status of decomposing the contract in the jurisprudence, legal system of Iran and international documents through interviewing with the professors and jurists and consulting with them.

Keywords: decomposability, contract, termination, dissolution

Copyright © 2018 International Journal for Modern Trends in Science and Technology
All rights reserved.

I. INTRODUCTION

In Iranian law, the decomposition of the contract is discussed by some of the legal writers and jurisprudents under the titles "decomposability of the contracts" or "dissolution of unit contract to numerous contracts". The discussion of divisibility of the commitment in Iranian law entitled as "dissolution of the unit contract to numerous

contracts" has precedence. In regard to this precedence, "if a contract is occurred between two people and if it is case of dealing, unit and non-decomposable, the contract is extensive and non-dissoluble.

One of the most important subjects in the area of sale contracts including internal or international is the quality of applying the decomposition of the contract and also applying the probable right of

purchaser's annulment in the assumption in which he/she has not the ability to deny the goods which is received from the seller in the execution of the contract, and yet, he/she wants to benefit from the right of annulment which is given to him. After drawing up a contract, it is specified that all of its components or qualities are not realizable, for example, some of the goods of the contract do not exist or they are not according to contractual description or some of its conditions are not realized or the obligor has no possibility to carry out the contract. In general, at least one of the elements of condition and description and etc. are not completely realizable in the contract, and this affair may be related to past, present or even future in terms of time. The importance of the matter is appeared where the discussion is on the dealing of the foreign parties. Under this article, the obligor may not force the obligee to accept a part of the subject of obligation. In other words, the creditor may balk at accepting a part of the obligation. It should be considered that currently, the parties of contract (especially in commercial area) should mention the decomposability in their private contract as one of the conditions of contract, while there is no need to this matter with the proof of this principle. The global society has inclined more than ever to write the uniform and transnational regulations which are appropriate with the particular expectations of those who are involved in these matters and are responding to their numerous requirements in the field of velocity, easiness and improvement of the commercial relations and execute them timely. Hence, it was also proceeded to investigate on the decomposition in some international documents. This research aims to study the viewpoints in the jurisprudence and the legal system of Iran in comparison to the international documents which include Geneva conventions, international convention of sale of goods (Vienna, 1980) and the Gutt agreement and also proceeds to discuss on the subject of the legal condition of decomposing the contract.

Essentials of decomposing the contract

Literally, decomposition means "separation, division and fragmenting" (Moein, 2009, p. 313), and literally, contract means "agreement or alliance of two or more than two bodies in one matter". (ibid, p. 695)

Article 183 of civil law defines the contract as follows: "contract means that one or several individuals agree on a matter which is acceptable by them."

In the definition of the contract, it can be stated that: "it is the agreement between two or more decisions which are carried out in order to create the legal influence." In this definition, the necessity of the phraseological aspect of the agreement and adherence of the parties to its substance is given implicitly, because the aim of the agreement should be creation of the legal effects (Katousian, 2007, p. 22). Since this legal effect is accordant with the parties' decision, it is a legal action. Hence, it should be stated that: contract is "a legal action which is carried out with agreement in order to create legal effect" (Katousian, 2010, p. 2).

In the definition of the decomposition of the contract, it is stated that: "whenever a contract is apparently one, but in practice, it may be dissolved to several contracts and each one of these contracts has the conditions of formation of a complete and correct contract, this matter is called dissolution of unit contract to numerous contracts (decomposition of the contract)." (Jaa'fari Langaroudi, 2009, p. 90)

In another definition, it is stated that "whenever the parties of the contract are two people or more or the objects of dealing are numerous or decomposable, so that each part of it may be independently evaluated, the aforesaid contract is dissoluble to numerous contracts and if the contract is occurred between two people and the object of dealing is a non-decomposable unit, the contract is extensive and non-dissoluble" (Emami, 1987, vol.1, p. 493).

In the Iranian civil law, some cases and instances of the contracts are observed in which decomposability of contract has faced with obstacle, like the invalidity of the condition. If the contract is dissolved, the main presented cases and examples are article 277, 431 and 441 of the civil law. These articles may not be a firm basis and document for doubt in the possibility of decomposing the contract as one principle, but in opposite, some of these articles may be considered among the exceptions of the principle of decomposability of contract. In our law, the interim condition is following the main contract. But unlike other substances of contract in the interim condition, decomposition is not allowed and with dissolution in the main contract, its interim condition is nullified. Article 246 of the civil law states: "if the dealing is cancelled due to rescission or annulment, the condition which is agreed in it is cancelled. These cases and other cases in which the decomposition of the contract is not accepted by the legislator do not prevent from accepting the

decomposition of the contract as a principle in the domain of contract law, and it is only an exception for the principle which cannot tarnish its validity (Emami, 1987, p. 72)

The concept of annulment

In the civil law, one of the subjects which are studied in the discussion of the general rules of the contracts is the discussion of termination of a contract. According to article 219 of the civil law, the contract which is enforceable might be annulled, cancelled or dissolved for different reasons. The annulled contract creates new law and responsibilities for the parties of the contract including this point that with ending the contractual relation, the parties of the contract are bound to reclaim the substitutes and the advantages. In some conditions, there is also the possibility for demanding the damage (Hayati, 2010, p. 1).

In legal terms, annulment means ending the legal existence of the contract by one of the parties or the third party. The annulment of a contract is indeed the unidirectional creation of its dissolution and it is naturally as a type of cadence which is carried out with a purpose (Shahidi, 2003, p. 202).

One of the writers of civil rights writes in the definition of cadence that: "composition is a legal effect which is carried out with a decision and unlike the contract, it has no need to be accepted". (Katousian, 2008, p. 19).

It seems that the below phrase has defined the right of annulment in a better way:

"Annulment is a principally financial right which is created through the law or tradition of one of the parties in the contract and in order to prevent from loss or the occurrence of regret and for each one of the transactors or both of them or the third party and it gives its owner the right to dissolve the contract unilaterally and end the legal existence of the contract. Therefore, it seems that it can be stated in the definition of the annulment that: the right of annulment is an option which is granted to its beneficiary by the legislator or the parties to deliver themselves from the contingent loss through its execution (Nahreini, 2007, p. 7).

The concept of dissolution

The dissolution is the infinitive of the Arabic "Infia'al" Bab of verbs. In the vocabulary, "solving the complex" means opening the knot and as a result, dissolution means being open (Knot and like them) and becoming decomposed (Sajjadi, 1995, p. 313).

But dissolution in jurisprudence and consequently in the positive law of Iran has two meanings:

1- Ending and annihilating: dissolution in its first meaning means annihilating of the available contract, so except the invalidity, it includes all concepts of annihilating the contract, i.e. rescission, annulment and termination, because in this meaning, dissolution means annihilation and until something is not available, it cannot be annihilated, so dissolution does not include invalidity.

2- Fragmentation: it means that if contract is situated on a composite matter in which each one of its components has the required competency that a contract is applied to it independently, in this case, the aforesaid contract even if depending on the necessity and appearance of the composition is not more than a contract, but indeed it means numerous contracts which are belonged to those components. Also in the dissolution rule, our purpose of dissolution is the same second meaning (Mohammadi, 2004, p. 124).

Decomposition of contract in jurisprudence and law

But if we want to mention the jurisprudential resources of decomposition, it can be stated that:

The principle of necessity as one of the jurisprudential resources of decomposing the contract:

Necessity means demonstration, remaining continuously with something and separation from it. In the terms of jurisprudence, it means non-transformative contract, constant contract, and the contract which none of the parties of trading has the right to cancel the contract. This is the nature of the required contracts, unless the legislator imposes a law which prevents from the necessity of the contract, like: right of rescission in lawful contracts. In other words, necessity, i.e. cancelling the contract from one of the parties of transaction is not permitted without the permission of other party. This is like the contracts which are neither broken nor accept transformation in the world of creation.

Principle of accuracy as one of the jurisprudential resources of decomposition of the contract:

The jurists have relied on the principle of health in confirmation of the dissolution rule (Naeni, op. cit., p. 220-222). In general, some of the jurists know the dissolution of the contract according to the principle of validity. Without explaining that if an amount of the dealing object has no competency, the contract happens for it, either because of lack of a condition among

the conditions, or because of the existence of an obstacle in it, while other amount of the dealing case has the competency for dealing. Order is issued for the authenticity of dealing in regard to the value which is competent of authenticity, and for the invalidity of some others. (MousaviBojnourdi, op. cit., p. 167).

Option in sales unfulfilled in part as one of the jurisprudential resources of decomposing the contract

Creation of the option in sales unfulfilled in part in accepting the dissolution of the dealing is because of the validity of its subject. In other cases, decomposition of the contract such as decomposition because of the numerousness of the parties of contract of this option is not created. The option in sales unfulfilled in part is a right which law gives to the client, so that if a part of the null sale is denied, he/she can annul the another part which is situated correctly. According to the article 441 of the civil law, "when the option in sales unfulfilled in part is obtained that the sale contract is null in comparison to other sales, because of some reasons. In this case, the client would have the right to annul the sale or to accept it with respect to the part in which the sale is situated, and extradite the purchase money with respect to the part in which the sale has been null".

Option in sales unfulfilled in part in the Iranian law is imposed for maintaining the adherence and relation between the components of the contract and giving balance to the considerations of the contract. When the relation and the adherence of the components of the contract is disassembled because of the nullification of some part of it, and the contract is divided to two parts of correct and null, the option in sales unfulfilled in part gives this authority to the promisee to annul all of the contract because of cancellation of this adherence (SoltanAhmadi, 2013).

In Iranian civil law, there is no legal article explaining the principle of decomposability of the contract, but yet, this principle can be inferred from the articles 387 (destruction of sold object before taking delivery), 397 (option of meeting place), 398 (option in sale of animals), 402 (option for delayed payment of the price), 410 (option of inspection and breach of description), 416 (option of lesion), 422 (option of defect), 428 (option of trickery) and 441 (option in sales unfulfilled in part). (Hayati, 2010, p.1).

In Iranian law, the public legal rule is not observed about this point that in which cases, the commitments are not dividable, and instead, where

the legislator thought it necessary, he/she has explained the indivisibility of right or a commitment, like the indivisibility of the option of defect inserted in part one of article 431 of civil law or indivisibility of the conditional case of dealing if the right of extradition is transferred forcibly to the debtor heirs inserted in note 1 of article 34 of persistence of record law. The indivisibility of commitment is not only because of the natural indivisibility of the subject of commitment, but as it is common in the international contracts, it might be stipulated in the contract or it can be held from the intention of the parties in conclusion of its contract.

The rules of decomposing the contract in Iranian law are as follows

- 1- The desirability of the decomposed part of the contract in parties' opinion: a part of the contract has the decomposability which is independently the purpose and desired of the parties based on their wills, as the phrase of personal purpose is applied in article 566 of the civil law. Also in jurisprudence, one of the conditions and commands of dissolution is that in the part and portion which are accounted as the subject of dissolution, realization of contract should be independently possible for it. This will may be explicit (parties clarify the decomposability of the contracts) or implicit (i.e. the indications and conditions and states follows the parties' decision). The most important implicit will is common law. Where the correlation and relation between the dealt components is not the condition and each one of the components are commonly independent from each other and according to this point that the parties of contract live in a society with such customs and they are familiar with the customs of their society or assumed to be familiar with them, the common law is considered as their implicit decision.
- 2- Undesirability of the decomposed part of the contract in parties' opinion: if the parties of contract explicitly stipulate the non-decomposability of the contract, or if their implicit will is set on the non-decomposability of the contract, for instance, the customs are on the similar contracts of non-decomposability, the contract is non-decomposable, i.e. the parties' will even determine the non-decomposability of the contract and the limits and the level of decomposability too (Safae et al, 1995).

The position of contract decomposition in the international law

It should be recognized that keeping the contract and not annulling it is of high importance for each trader individual. This subject is of high importance especially in international dealings as far as the parties are satisfied of preparing much financial load in order to prevent from the annulment of the contract. Attention to this point is very essential that the international sale convention should be placed as one of the main resources in international area in the area of investigation on the influence of decomposability of convention in the international area. It may be clearly found in the contexts of convention that the decomposability of the convention is accepted and through contemplation on article 51, it is mentioned that the principle is based on the decomposability of the contract. However, this principle is repeated in article 73 about the installment transactions.

Decomposability of contract in the international convention of sale of goods

In none of the articles of convention, severable and unseverable contracts are defined. Although, in some of its articles, it is pointed to the criteria of non-decomposability of the convention, including installment contracts and extensive contracts (paragraph 2, article 51 and paragraph 3 article 73).

Two articles (articles 51 and 73) of this convention are directly assigned to the decomposability of the contract. Complete assigning of these two articles to the principle of decomposability of the contracts and stipulating the independence of the conditions of solving the difference in its included contracts (clause 1, article 81) as one of the examples of contract decomposability in this convention which is considered by the numerous legal systems in its approval, represent the importance of decomposability in the current legal systems of the world too. Therefore, it should be stated that there is no difference in the concept of contract decomposability in Iranian and English laws and the international convention of sale. In all of these systems, the principle is to maintain the contract as far as possible, limiting the influence of violation, violation of lack of transferring the factor of partial extinguishment of its contract to the whole contract (SoltanAhmadi, 2013, p. 35).

Theories of dissolution of contract in the international sale convention

In this theory, indeed, two types of annulment are predicted. The first type is an unintentional or

automatic cancellation which is carried out outside of the compass of the individual's will, and the second type, is the intentional annulment which is obtained through applying the opinion of the party of contract. Indeed, if the party of contract commits violation, and that violation is fundamental, i.e. it damages the parties' expectations fundamentally, so that if the contract party knew the opposite party does such action, he/she would not enter the contract, fundamental violation of contract has occurred.

According to this theory which is based on the subject matters, the contract is cancelled automatically through violation and the wronged party has no need to prove that he/she has annulled the contract, and the effects of contract dissolution appear since the time of realizing the dissolution (SardouiNasab, 2010, p. 16).

Also, annulment of the contract is carried out by a party's will and it is not a subject matter which the contract is automatically dissolved by lack of discharge of contractual duty. This matter is also in the same way in Iranian law. According to article 237 of civil law, the party may claim his compulsion in the same commitment which the commitment is in his/her favor and through not performing it by another part through proving its commitment and violation from the court.

Conditions of decomposing the contract in Iranian jurisprudence and law and international documents

The subject of commitment in the barter contract includes considerations. About considerations, in addition to the components of the considerations, their qualities are also proposed. For example, some part of the qualities of the commitment subject like its components might not be realized. Lack of realization of the contract or violation and contravention with respect to a part of each one of these pillars, has different warranties of execution including nullification, right of annulment and etc. Article 441 of civil law is one of the examples of decomposition of the contract in the assumption of invalidity of a part of the object of the sale; but decomposability is not only limited to the invalidity of a part of the dealing case. Decomposability is a public concept which the nullification of a part of the contract is one of its cases (SoltanAhmadi, 2013, p. 29).

Also, decomposition of the contract is derived from the will of the parties of the contract. Indeed, this is the influence of the parties' will who view maintaining the contract even if there is an assumption for separation of a part of it and they

do not recognize invalidity or lack of realization and execution of a part of the contract as annihilating all of the contract. In contracts in which attachment and the sequence of the dealing components have no feature and each one of the components has existential independence, this independence of the components is original and it belongs to the will of the parties of the contract. Hence, partial execution of the contract causes realization of the parties' will from drawing up a contract to the extent that the contract has been carried out. Complete realization of the contract and complete adherence of all components is an additional description for the parties' will which should be proved.

The principle of necessity or compulsion of the contract is a legal rule which has prescribed the order of necessity as the main order for the contracts. The meaning of necessity of contract is that principally, each contract should be executed and none of the parties of the contract may prevent from executing the contractual commitments except in exceptional cases. Article 219 of civil law which is the legal basis of the principle of necessity states: "contracts which are imposed according to law, are binding unless they are annulled with the agreement of the parties of cancellation or for legal reasons." The appearance of the article indicates this matter that the meaning of contract binding is the indispensability of the purport and the context of the contract (Shahidi, 2003, p. 23). In accordance with the principle of necessity in case of doubt in the existence of one of the properties and the effects of necessity or a part of it in the contract, it should be recognized as constant for the contract with the principle of necessity.

Article 223 of civil law, either it is interpreted as common occurrence or apparent occurrence, encompasses the validity of the contract since the beginning of the drawing up until when its legal life is ended in the world of credit by proving the corruption. Therefore, in the assumption of partial annulment of the contract in common sense, the rest of the contract has its validity based on the principle of validity. In this case, the analogy of priority is cited, with this argument that "when the principle of validity is applicable in the status of doubt in the occurrence of the contract, with respect to violation of part in which the principle of contract is not faced with problem, but its durability and survival encounters with doubt, the entrance of the principle of correctness and ordering to the validity of the decomposed contract is stronger than the initial case of doubt in the

contract (SoltanAhmadi, 2013, p. 204). Therefore, the principle of validity is current since the time of occurrence of the contract until the time that the contract is legally cancelled. The effect of the principle of validity is to consider the contract which this principle is dominant on its destiny, as being correct. In contracts in which no obstacle is available for decomposing them; this effect is realizable about a part of the contract.

The essential rules are the rules which are placed in the way of inference of the secondary religious law, major of syllogism, and they are not considered per se themselves. But the jurisprudential rule is a general order and it has some slight examples which each one of them constitutes a jurisprudential problem and it is an order of the orders of religion per se and it is considered independently, such as the rule of the necessity of fulfilling the contract. The conditions of the rule of dissolution in Jaa'fari jurisprudence is as follows:

- 1- When in the contract, the seller sells what he/she does not own it and it belongs to other persons along with his/her properties (selling which is possessed and no possessed), in other words, a part of the object of sale belongs to other person, the dealing on the property is not unauthorized and its validity depends on the owner's satisfaction. If the owner allows the unauthorized contract, that contract is correct, otherwise, if the unauthorized sale is denied by the owner, the contract is annulled since the beginning and it has no influence. Now, if in a contract, a part of the object of sale belongs to the owner and another part belongs to other person and he/she denies something except that dealing, in this case, according to jurists' opinions, the contract of sale is correct with respect to the part which belongs to the seller and it is null with respect to the others. Even the jurists who do not accept the unauthorized dealing (and observe the nullification of the unauthorized dealing as absolute), have issued such order and command in this hypothesis too (Mohammadi, 1990).
- 2- If a part of the object of sale is wasted, in this case, the sale is only cancelled with respect to the wasted part and it is correct with respect to another part.
- 3- If during the contract of renting, the possibility for exploiting the renting case is annulled in comparison to the remaining period, for instance in renting the residential house for one year, if that house is destructed after six

month, in jurisprudents' opinion, in this case, the renting is correct with respect to the existent and it is only null with respect to what is wasted.

- 4- If in the marriage contract, a person marries two women with a unit contract and then it is given that the marriage is null for one of that two people for any reasons, the contract is correct and valid for the another one.

The contract decomposability in Iranian jurisprudence and law is based on the will. Also, in the studied legal systems, the basis of the principle of the sovereignty of the will of contract decomposability originates from the will. In Iranian law, the basis of contract decomposability is not a mandatory law, because the agreement which is unlike it is legal and allowable. The contract decomposability comes back to the will of the parties of contract, i.e. this is the influence of the will of contract parties who have intended to maintain the contract even in the assumption of separation of a part of it and they do not know the execution of a part of the contract as resulting in the annulment of the whole contract, in the other words, the will of the contract parties is on maintaining the contract as far as possible.

In contracts in which there is no feature in the correlation and sequence of its components and each one of the components are independent from each other, this independence is belonged to the components. This will is clearer among the traders in traders' dealings. Principally, the traders are following their goods and services and they accept any amount of the contractual components which are realized, and each one of the components and goods of a contract is their desirable and purpose, unless the dependence and relation between the components and goods of contract subject is proved in a way that lack of realization for one of them, negates another one (Maraghi, op. cit., p. 139).

The laws and regulations regarding the contract decomposability in the civil law are also a manifestation of the will of the contract parties. For instance, in the article 566 of civil law which is one of the most important documents of decomposability, we encounter with a criterion called intention in principle. In this article, the role of will and intention in making the contract decomposable is completely obvious. In addition to this point that the decomposability and dissolution of unit contract to numerous contracts are themselves directly due to our will both in the

jurisprudence and our law, since contract decomposability is accepted in many countries and legal systems and also explicitly accepted in international documents including international convention of the goods, these rules and regulations have become common custom in the trading, especially in the international area and also in the Iranian law, this custom may be documented in the contract decomposability (Naeeni, op. cit. p. 219).

As it was mentioned, Guttas an agreement could provide the background for the commercial release and development of trading; but since at first, Gutt was only a treaty and had no legal personality and consequently, it had no appropriate system in the cases of encountering with the complaints and secondly, with development of the areas of trading and exceeding of the backgrounds of global trade from the part of goods to the part of Gutt services, and also intellectual assets, the necessity to establish an organization which is able to face with the two above problems was felt by the member countries. Hence, in year 1994, in the framework of Gutt negotiations (Uruguay round), the decision was that the world trade organization is established. In this way, in year 1995, the world trade organization was established and today, more than 97% of the global trading is carried out in the framework of this institution.

According to clause 1, article 73 in the installment agreements, each installment should be considered as an independent contract in terms of annulment (Udit, 1990, p. 159). The purchaser or seller may annul the sale contract in relation with an installment when fundamental violation is realized for it, or he/she can apply the annulment as partial. Indeed, it can decompose the null or revocable part from the correct part, if the general rules allow. The rules associated with the annulment based on the occurrence of the fundamental violation of the contract given in the article 25 and part a, clause 1 of article 49 and part a, clause 1 of article 64, are applied separately with respect to each installment which is as an independent contract. For instance, in the contract of wheat delivery, over 10 installments which one of them is not executed or it is executed imperfect, the purchaser may annul the contract relating to this part if fundamental violation occurs with respect to it, although the carried out violation is not fundamental with respect to the total contract.

The second reason of annulment in the contracts is annulling the contract before the regular due because of predicting the fundamental violation of

the contract in the future. The possibility to annul the contract with respect to the same installment which fundamental violation is realized for it does not always compensate the creditor's (obligee's) loss. When lack of execution or violation of the previous installments is such that it convinces the opposite side that the obligor commits fundamental violation about the future installments, he/she has also the right to annul the contract with respect to the future installments. For instance, the purchaser pays an installment of the price and then he becomes bankrupted. The necessity of expectation until the certainty time of non-execution of the future installments might aggravate the status of both parties of the contract; if the obligee is the purchaser, he/she requires the goods, and if he/she is the seller, he/she cannot send the goods without receiving any prices, and also sale of the mentioned goods to the third parties is not possible (Udit, *ibid*, p. 160).

It was stated before that one of the means of annulment in the convention of articles 47 and 61 and part "b", clause 1, article 49 and 64, termination of a contract is because of lack of execution of the commitment during the deadline which is given from the seller or the purchaser to the opposite party in order to execute the commitment. The question which is proposed here is that with respect to the installment contracts, can the seller or the purchaser grant additional deadline to the opposite party about execution of the same installment and can he/she annul the contract if the violation is realized for an installment (including fundamental or non-fundamental) or would also merely the application of the annulment possible in the assumption of realization of the fundamental violation with respect to one installment in the installment contracts? In other words, does the annulment institution only observe the hypothesis which no part of the contract is executed because of lack of execution of the commitment in the specified additional time or it can also be used in the cases which a part of it is executed?, the problem which is less discussed by the descriptors of the convention or they have not considered it at all.

But, according to this point that the article 51 of the convention in non-installment conventions is not conforming to the agreed descriptions when a part of the goods is not delivered or a part of the delivered goods is not conforming to the agreed descriptions, it has prescribed the application of

articles 46 to 50 including the right of annulment because of lack of executing the commitment in the determined additional time (part "b", clause 1, article 49), lack of its acceptance in the installment contracts has no justification. Furthermore, according to the convention, each installment of the installment contracts is considered as an independent contract. Hence, there is no reason for disagreement of contract annulment with respect to one installment, due to the expiration of the additional time and non-execution of commitment in this period (Jaa'farzadeh, 2000, p. 87).

Analysis of the effects of contract decomposition

The analysis and the arguments which are proposed about this rule or the related cases in jurisprudence, including in the discussions related to unity and numerosness of contract in limiting the amplitude of the options are also helpful. The jurisprudents' expressions about the numerosness of the contract where the contract is apparently unit (although this criterion is not specifically applied for option in sales unfulfilled in part), is also attributable in limiting the cases of applying the option in sales unfulfilled in part. Accurate analysis of option in sales unfulfilled in part represents that when the adherence and community of the dealt components is the purpose of the parties or it is wagered on it, the option in sales unfulfilled in part (or option of unfulfilled condition) is created (MousaviBojnourdi, *op. cit.*, p. 149).

Effects of dissolution rule in jurisprudence:

1- Because of this point that option in sales unfulfilled in part is supporting the intention and satisfaction of the parties of contract based on adherence and combination of the components of the contract, this relation and adherence is also generally considered as supposed, but where something opposite to this assumed intention is proved, i.e. it is specified that there is no intention for accession and adherence of the components of a contract and their only association is that they are congregated in a unit contract, in such state, it can be stated that the option in sales unfulfilled in part is not created through applying the dissolution rule, as if some of the jurisprudents do not recognize the congregation of the components in the unit formula as a reason for relation between the components, and also in this state, they recognize the individuality and independence of

the components as the principle and also the intention of relation between them as a waste order which should be stipulated.

- 2- In jurisprudence, the rule of dissolution runs in the unit contract, i.e. the unit contract is divided to numerous contracts by applying the dissolution rule, but where the contracts are really numerous and only congregated in one unit beside each other and indeed, each one of the contracts are independent from another one, with the annulment of each contract, no disorder enters the validity of other contracts, and also with option in sales unfulfilled in part, no case is found for creation and running.
- 3- Some of the jurists recognize the reason of establishing the option in sales unfulfilled in part as participation with another, and some other recognize it as some types of option in sales unfulfilled in part; i.e. they know the reason for creating option in sales unfulfilled in part and the right of annulling all of the contract as this point that the client enters into partnership with the others in the dealt property and this participation is fault in their opinion and it creates the annulment right. So where no participation is created through decomposing the contract to both parts of null and correct, it can be stated that also the option in sales unfulfilled in part is not created. Therefore, it can be observed that the cases of applying and executing the option in sales unfulfilled in part can be limited by accurate analysis in the jurisprudence, and its extension to dissolution of all cases of unit contract to numerous contracts is prevented (SoltanAhmadi, 2013, p. 174).

The effects of contract decomposition in Iranian law

The most important effect of contract decomposability for limiting the range of applying the factor of contract extinction (annulment or invalidity) to the only part of the contract is separated from the contract because of the partial nullification or annulment or termination, and the remainder of the contract remains in its validity and strength. In these cases, also other guarantees in case of violation from a part of contract such as: the right of meaning or damage before the defect or violating a part of the case of dealing can be mentioned. The effect of contract decomposability in the studied legal systems is that it charges the judge to limit the factor of nullification or annulment in the contract and perpetuates the life

and survival of the contract in the social and legal system after separating the part which is faced with the impediment. So, annulment, termination and nullification are the guarantees of execution of violating the contract in Iranian law. Therefore, the effect of contract decomposability should be independently investigated in each one of these cases (SoltanAhmadi, 2013, p. 154).

Another effect of decomposability is that it causes the option to be belonged to only a part of the contract. In this state, only annulment of that part is allowed, and with its annulment, a part of the contract is separated, but the remainder of the contract remains in its validity and accuracy. In the jurisprudence, hereof, the application of the option in sales of animals among numerous objects of sale is explained as sample witness. Also, we saw in the option of defect and inspection and incorrect description that the annulment of whole contract is not possible where the case of dealing is numerous. Although in the option of inspection and incorrect description, there is also the possibility to annul the whole contract according to article 412 of civil law.

Partial repudiation of contract, i.e. applying the right of annulment on a part of the contract should not be confused with the option decomposition in this sense that numerous options are derived from the unit option and there is also the possibility to apply each one of them independently. Perhaps in the first look, it can be stated the partial annulment is the contract decomposition, but it should be considered that these two have many difference with each other and it should be recognized that they are two separated installations. Of course, the option is the right which is inherited by the inheritors, but the necessity of alliance in the denial which is inserted in article 432 of civil law practically prevents from independent application of this unit option with regard to each one of the inheritors. Therefore, based on this article and background in the jurisprudence and other articles, decomposition of the option is not possible, but partial annulment of the contract is possible. In addition to the option of defect, option of inspection and option of incorrect description and option in sale of animals, also in other options, using the criterion which was explained in the jurisprudence entitled as unity and numerosness of the contract and entitled as customary plurality of running contract, the application of option in a part of the contract, for instance the delay in the price can be recognized allowable (which are customarily numerous

contracts which are collected in one document or composed with one word).

Effects of contract decomposition in the documents of international rights

According to article 51 of the convention, if a part of contract is violated numerous sanctions are authorized by the loss sustainer and he/she can apply each one of them. If the loss sustainer selected the partial annulment of the contract, clause 1 of article 81 would be applied. Under this clause: "invalidity of contract absolves the parties from carrying out the obligations of the clarity of the contract, if any type of claimable damage is paid". Also according to clause 2, article 81: "party who has executed all or a part of the contract, may seek restitution of what is remained due to delivery or payment contract. If both parties are bound to repeat, they should take action coincidentally".

In the convention, the retrogressive effect of the annulment (rescind) is not explained explicitly. The interpreters have not content themselves with explaining and describing the text of this article and they have proceeded to discuss on the influence of annulment, but they have not explained that does it initially annihilate the annulment of the customer's ownership on the object of sale which is created through the contract or since the annulment. In its actual meaning, the retrogressive effect is when it annihilates the contract annulment since the beginning. It is derived from article 84 that the contract annulment is dissolved since the beginning. Therefore, according to this article, it can be stated that annulment in convention is retrogressive and it dissolves the contract since the beginning (Katousian, op. cit. p. 371)

In the public agreement of tariff and trade such as the global organization of trading, specific decisions should be adopted by the vast majority of the competent members. For example, in exit and annexation to the public agreement of tariff and trading, the decisions should be adopted by two-third of the members. Similar regulations are executed in the agreement of the global organization of trading, although decisions about exiting in the global organization of trading currently require the majority of three-fourth of members. In Gutt, in the decisions which required such competent majority, the official vote taking was carried out by the members whether through sending the ballots or through the method of obtaining the votes from those who were present in the session.

However, with respect to such decisions which were referred for vote taking under Gutt's view, it is good to know the texts and draft of decisions and making decision for presenting the draft of decisions for vote taking through the previous consensus were agreed. The procedure of presenting the draft texts of the decisions requiring the competent majority for vote taking through sending the ballots was set in the agenda after acquiring the consensus in the contents of the decision, since the initial months of enforceability of the global organization of trading (Fathizadeh and Kamari, op. cit. p. 701).

As it was in progress in the conference, it was clear that some of the developed countries and different groups belonging to them have decided to transfer their movement speed and the influence which was held in the preliminary process of Geneva. This point is particularly important in this term that the experience has represented that how the depth and automation of cooperation in Geneva may be annihilated when the negotiations are assigned to the official authorities and the ministries who take up position in the capital city. While entering its final days, the Seattle session threatened a great number of developing countries which were not included by small consulting groups, whether through coordinators or the president of the conference in an unprecedented movement and they represented their readiness for denying any type of fundamental conclusion by the small consulting groups based on procedural objection. Of course, this threat was never experimented, as if the fundamental conclusion resulted from the consulting process would never be realized and the draft text was never manifested. However, this subject had a very important message, i.e. a great number of the developing countries were not accepting anymore that they should be a mere observer in the world trade organization and they were prepared to accept a higher degree of the responsibility (Fathizadeh, Kamari, ibid, p. 73).

Conclusion

Contract decomposability in Iranian jurisprudence and law is based on the will. Also, in the studied legal systems, based on the principle of voluntarism, contract decomposability originates from the will. In Iranian law, the basis of contract decomposability is not imperative law, because agreement in its opposite is lawful and allowable. Contract decomposability comes back to the contract parties' will, i.e. this is the influence of the contract parties who have intention and view on maintain the contract even in the assumption of

separation of a part of it, and they do not know the invalidity or non-realization and execution of a part of the contract as a reason for annihilating the whole contract. In other words, the contract parties' will is somewhat possible in maintaining the contract. Therefore, it can be stated that the basis and origin of contract decomposability is the common will of the contract parties. In other words, decomposition is possible when the purposes do not completely change in the contract and no new purpose is replaced with it. The courts do not attempt to replace and change the will of contract parties, but the role of will in installment contracts of the subject of article 73 of convention is more manifested, because what makes the contract by installments, i.e. sets the delivery of goods or the price by installments in given times and causes independence of each one of the installments, is the explicit will of contract parties. The most important effect of contract decomposability is that the range of applying the contract decline (annulment or nullification) is limited or detailed in the only null or terminable part of the contract, as if termination is used in the civil law in similar cases. If a part of the contract is faced with invalidity, for example a part of the dealing case is belonging to another person or a part of the dealing case lacks possession or it belongs to other persons and it does not allow something except the dealing. The effect of contract decomposability is generally understood in the jurisprudence from the jurisprudential rule of dissolution of unit contract to numerous contracts and it is usually derived from some of the options. So, annulment, termination and invalidity are breach sanction in Iranian law. In French law, the writers of that legal system believe that annulment dissolves the contract from the beginning. There is also such an understanding in Egyptian law.

Suggestions of investigation

Both in Ja'fari Jurisprudence and in Iranian law, the survival and execution of the contract are very important and the legislator has also explained his/her will explicitly in numerous positions (articles 237, 238, 239, 376, 414, 476 of civil law). Despite all things which were stated about the contract decomposability in Iranian law, there is a need for accurate and transparent legislation in this area. There is no doubt that keeping the contract alive, even a part of it and less non-wastage of the rights of each one of the parties is the aim of both parties of the dealing.

The main reasons of most of the jurists and lawyers for not accepting the decomposition of options right or partial annulment is to avoid from entering the loss which is due to contract decomposition. While in such cases, like the assumption of invalidity in a part of the contract and its compulsory decomposition, the obligee may be given authority because of sales unfulfilled in part (criterion of article 441 of civil law) and indeed, greater loss may be prevented.

Therefore, the available scattered regulations in contract decomposability and its exceptions should be collected and an independent part in contracts should be assigned to them to encompass all related cases. This is the legislator's task to complete this void by the comprehensive laws. It is suggested that the principle of decomposability of contract is prescribed explicitly in Iranian law.

Of course, the legislator may also order to decomposability of some of the particular contracts with the aim of supporting the parties or one of the parties who has less power in that subject (like subjects of labor and employer and area of family) through considering some considerations or purposes (like article 412 of Iranian civil law and English sale law in which sale is not decomposable before the consumer).

REFERENCE

- [1] Emami, H, 1987. Civil rights, 6th edition, vol. 1. Tehran: Eslamiyeh Publications
- [2] Jaa'fariLangarudi, M. 2009. Influence of will on the civil law, Tehran, Ganj-e Danesh publications, 2nd edition
- [3] Hayati, A. 2010. Influences of annulment on the international convention of goods sale and Iranian, Egyptian and French civil law.
- [4] SardoeiNasab, M. 2010. Comparative investigation on contract annulment method in Iranian law and international sale convention of Vienna, 1980, legal journal of Mizan, new period, no. 3 and 4.
- [5] SoltanAhmadi, J.2013. Contract decomposability (comparative study in jurisprudence, Iranian and English law and international convention of goods sale), Tehran; Javedaneh publications, jungle, 1st edition
- [6] Shahidi, M. 2003. Extinction of obligations, Tehran, scientific-cultural assembly of Majd, fifth edition.
- [7] Katousian, N. 2007. General rules of contracts, vol. 1, Tehran: SahamiEnteshar publishing co., 1st edition
- [8] Katousian, N. 2010. General rules of contracts, vol. 2, Tehran: SahamiEnteshar publishing co., 1st edition
- [9] Moein, M. 2009. One-volume Persian dictionary, Tehran: Sahel publications, 4th edition

- [10] Nahreini, F. 2007. Nature and effects of contract annulment in Iranian law, Tehran: Ganj-e Danesh library publications, 2nd edition.
- [11] HoseiniMaraghi, M. 1997, al-Anavin, 3rd volume. Beirut: Islamic publishing institute, 1st edition. Tabatabaei Hakim, M. 1951, Nahj al-Feqahah, 1stvol, 1st edition. Najaf: al-Matbaa'eh al-Elmiyeh
- [12] MousaviBojnourdi, M. Bi Ta. Al-Ghavaed al-Faqihah, vol. 1 and 3, 2nd edition. Qom: Maktab-e Sadr publications.
- [13] Naeeni, M. 1997, Manih al-Taleb fi Sharh al-Makaseb, 1stedition, vol. 1 and 2. Qom: Islamic publishing institute.
- [14] Mohammadi, A. 2003. Rules of jurisprudence, Tehran: Dadgostar publishing co, 5th edition.
- [15] Safaei, H et al., 1994. International sale law with comparative study, Tehran university publications, 1st edition
- [16] Audit, B. (1990). La vente internationale de marchandises: convention des Nations-Unies du 11 avril 1980. Paris: LGDJ.

