



Principles Governing on the Government Private Contracts (Iran And England)

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ABSTRACT

Given the increased population, extending the state's duties very much day after another, and also in order to provide the public interests, states should inevitably hold different contracts with various divisions of society. The governmental contracts have so far classified into two types of the governance and commissioner which their principles and rules are different from each other. In other words, the principals of commissioner contracts make the state follow the private and civil law. Additionally, considering the role of the state as the other party contracts and employer or goods buyer, and providing the public interests, which the private and public contracts taken into account in England, the private governmental contracts are based on principles and rules rooted deeply in the governance role of the state and its being representative in providing the public interests. The state cannot act disregarding its representative role such as the parties of civil contracts. So, the states usually include special condition in their private contracts and apply some principles in these contracts to make them similar to their public contracts. However, there are some differences between these two types of contracts which distinguish them. Actually, their common denominator, their accomplishment and signing up are to provide the public, state and society interests. This makes different the private contracts of the state from the private sector and also, principles dominating them are very different from those affecting the civil contracts.

Keywords: Contracts, public interests, private contracts, governmental contracts



1. INTRODUCTION

Law professors classify the governmental contracts to two frameworks, sovereignty and tenure contracts, in other words, government public contracts are in the form of sovereignty contract and tenure are in the form of contracts government private contracts. They know principles of government public contracts is function of public law and principles of government private contracts is function of private and civil law, this classification is criticized that is government could generally take place imposition of private law character in conclusion of contract? Is the government can only seek more profit and cost less like a private law character? According to existential philosophy of government as community representatives that has duty of society benefit, so, government tenure contracts concluded in form of government private contracts is function of mentioned rule and public benefit and it can't be an exception of this rule. In this article have tried to investigate in short the government private contract with glimpses on the England contracts until extract and write its different than civil and private law and its principles governing.

2. PRINCIPLES GOVERNING ON THE GOVERNMENT PRIVATE CONTRACTS (IRAN AND ENGLAND)

With the increase in population and responsible government in form of sovereignty as cover the different needs of society in order to economic development plans and ... that government is forced to conclusion of contract in order to cover the merchandise and other services, on the other hand ,existence of economic, social and political tension and recessions rooted in advanced economies in the world require increasing government intervention in the various aspects and government is forced to intervention in order to advance its economic goals for the visible and invisible. This items lead to not only in developing countries but also in developed countries, the government had to intervene in the economy and various conclusion of contract especially with the private sector [1]. Concluded contracts of government despite of maintaining their classical and traditional foundations for an agreement between the parties to the contract and function of principles of all contracts and they have properties which distinct them from public contracts, and the rules govern one of them that expectation is the governing rules on of the public contracts [2].



Recognized difficulty of government public contract is because of sovereignty of the rules and principals, public and private law which clearly show that the conclusion method, performance and cancellation of these contracts, regardless of sovereignty of the rules and principals on contracts is the function of special rules and exceptions, that is because the government is one side of governmental contracts and sovereignty is not effective and because of the public meeting for forming of the contents in governmental contracts [3].

Forming of ideology, absolute responsibility of government for its actions in Europe and America, provoke that the government should be two private legal character in conclusion of contract, however, from this point of view (will consider from the viewpoint of subject) couldn't have main effect on general rules in public contracts in modern countries including England, also from the viewpoint of the separation of sovereignty from tenure, [4] there is few difference between conclusion and performance method of contracts and cancellation of government contracts with private sections and maybe absolute responsibility of government for its actions and dividing of its performance and division of the government activities to the sovereignty and tenure Could have effect on reference for addressing the difference arising from these concluded government contracts with private section, but the major view in England and Iran law, Takes precedence over the public interest which according to governmental structure in different communities it has some strong and weak points. Therefore, in England law when the contract performance and disagreement between parties to the contract, the topic to be mentioned in public tribunal and considered [5]. Governments like parties to the contract in private sector have to analyze the right economic on the contract, in other words, economic trends of law based on the use of economic pattern of human behavior in concluding the contract would consider to analyze the rules of economic law in a way that also the parties of private governmental contract being correct by modifying the prices and benefits. Before these changes, (government and private sector). According to decision maker logic who match his behavior with the result, in considering the rules of the contracts in civil law, it will turns out that the goal of many rules of contracts is to make the interaction cost lower between patties or optimizing motivations for optimized using of resources and creating



innovation and finally increasing the economic welfare of society from the government [6].

In the economic based on market, which government like the other section of society consider the profit and cost in economic actions, like the private sectors employees, haven't underestimated this subject and with the glimpse to that, especially in normal condition, concluding the contracts is based on lower cost and more efficiency, this also has a direct relation with the infrastructures of community and how the big is government, in developed countries of the world, especially England, the profit and cost of concluded contract has special prominence and if the government don't respect them it should be responsive in front of grandee and elders [7].

In critical and special situations (force major), question of cost and profit is overshadowed of immediate needs and legal economic of contracts is not considering, especially in the countries which has centralized structure and economic of government, contracts influence the conditions and its pressures and the lack of sufficient supervision on conclusion contracts forms and its performance, in this situation can make huge rents and overshadow the rules of private legal contracts [8].

Other issue is how to cancel the private governmental contracts because of different reasons, which the condition and cancellation the contract method as the civil law mention if it is different from cancellation the contract that its parties is governmental companies and the cancellation perform by relevant organs and if the effects of cancellation in private governmental contracts are same as private contracts or not? Or they can be different from each other. It shouldn't ignore that generally the contents of legal rules on government regulation and contracts and it is deducted from that, preferred, supportive condition and the cancellation of contract because of different reasons like for emajor and etc. can be consider as the base of cancellation [9].

According to Iran civil law, immediately after concluding the contract, is effective and enforceable for parties and their legal deputy, and is ineffective to the third party and out of contract individuals: this rule that is known as relative contract have accepted and predicted in article 231 [10], but in the contracts which one side of it is government, in addition of functionality of this rule, it has other rules and legal judgment, so that it meet more exceptions.



Maybe the reason of this situation and its exceptions, protection of public interests because concluded contracts from the government (private and public) in addition to maintain a contractual nature, it should meet some principals which should be preserver of public interest and community interests [11].

So we cannot consider the private governmental contracts as same as private legal contracts in terms of requirements arising from that and its rules, government contracts including private or public in conclusion, has main differences with private sector contracts which has a great effect on its rules and principals.

Because of that we can see that although the private contracts of government that is doing for tenure of government but in practice is the function of public governmental contracts and it has some principals that has so many similarity to governmental contracts, also the original of private governmental contracts vice versa of private sector contracts, are the function of special formality in concluding (tender) While administrative and civil contracts are exception from this point and it is not legally essential to respect these formality to perform private transactions, in civil law qualification is not proposed and vice versa capacity is important and in also public law and private government contracts, having capacity is not the only condition for concluding the contract but another factor which call “legal authority” and “legal representation” add to Nationality element and the meaning of qualification is authority that the rules and principals of an organization give to section of that organization that is official, so it can do legal actions with the company name and concluding the contract is one of the authority symbol [12]. Maximum difference which overshadowed on public and private contracts is common between all the public sectors, private or public, is the security of community goals and needs which government case that in its private contracts while in private law for everyone works for himself and Grounding his profit. In addition government parties, make some conditions in the moment of concluding contracts, and if the opposite side doesn't respect that, himself directly to the performance of that condition without referring the court, which base is in the government sovereignty [13]. Must be attention when side of contract is government is different with side of contract is person of private law which its typical are the cancelation, cost, authority of employer, interpretation of contract regulations, sanction, breach of obligations in concluded contracts such as private governmental contracts,



these cases and aforementioned things, make some principals on private government contracts which is not for private government contracts and make the main differences between civil and private government contracts.

3. CONCLUSION:

Whatever have been mentioned about private governmental contracts and about its classification, put that in sovereign contracts. Maybe its appearance has clear differences but its nature has many similarity to public contracts and in other side some of law professors, know the rules of private contracts as civil legal private contracts dose have a deep and accurate look to governing think on the private contract that side of this kind of contracts isn't the person of private law that only thinks about of more profit and less cost, here side of contract is government that perfect representative about cover the interest for society profit and have sovereign power and in England law this contracts are saw as covering the Public profit and although at the disagreements time public court is the reference of investigate and solving claim but existence of covering the public law and community profit caused to which this contracts saw in different form because the rules mention that governing rules on the contracts is different when side of contract is government relative to side of contract is person of private right, that reason of this difference is because of the government representation about covering the more and better public profit, so principles of governing on the private contract of government, although different with principles of governing on the public contract of government, but there is similar which this principles make different private contract of government than contract of civil and private law that mention in the text of article.

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