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Review Article

A Comparative Study of German and Iranian Law on "Standard Terms" of Contract

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ABSTRACT
Development of trade relations in the international arena, above all is indebted to contracts with "standard terms". These contracts have accelerated the deal and exchange of goods and services by presenting specific forms to different people. Despite its many advantages, the use of this type of contract entails serious challenges to the extent that, German law has specifically laid down regulations such as AGBs for this type of pre-formulated contracts. The increasing use of this type of contracts in Iran led the researcher of the present study to compare the law systems of Iran and Germany through an analytical-descriptive approach, in order to find solutions in the Civil Code for possible challenges of this type of contracts; Finally, it was found that by applying the provisions of Article 975 of the Civil Code, and the use of certain general principles of law such as contra proferentem and consumer protection law, the law could prevent the issuers of standard contracts from profiteering and therefore, protect the rights of costumers.

Keywords: Conclusion of contract, standard contracts, consumer rights, control mechanisms of standard terms of contract

INTRODUCTION
The development of trade relations between individuals has turned into an undeniable necessity due to an increase in productions at global level and the possibility to transfer products to different geographical areas. Hereupon, people are willing to quickly realize their business demands; the development of internet networks has increased the speed of exchanges to a great extent. As the speed of exchanges and transactions increase, the rules of transactions have also changed. On one hand, people are not willing to spend a long time to formulate contracts and to make agreement with the salesperson, and on the other hand, the development of communication throughout the globe makes it impossible to reach the same agreement with all people all around the world. Even in the domestic area, the increase in the number of users and buyers results in the impossibility of a face to face deal and it makes it impossible to reach an agreement for each transaction that is in accordance to the will of both parties. Therefore, it has become common today to use "contracts with standard terms", and every individual who agrees with the content of these contracts which is presented in the form of standard form contracts, logos, brand, and etc., may accept the contract and enjoy the given benefits. But the main point is that contracting with the use of “standard terms” is usually followed by different legal challenges which need to be answered. The most important issue in this regard is that, what is the main difference between standard terms and other terms and conditions which are considered as stipulations but are not

written in the contract or are written after the agreement of the parties? What are the benefits of this type of contracts and how can the parties use them? In fact, what are the legal challenges of using this type of contracts? For better comprehension of the aims of this study, the researcher will first state the concept and nature of term, types of terms, and previous literature on standard terms. Next, the benefits and risks of using standard terms of contracts will be stated, and finally, issues such as consumer rights, control mechanisms of standard terms and other issues will be discussed through an analytical-descriptive approach.

Statement of the Problem

Contracts are considered part of the public order of every society, because the relations between masses of people are determined based on these contracts. Therefore, all countries have defined certain limits for contracts in their laws. One of the controversial issues in different legal systems is the stipulations. Regardless of the nature and number of terms that may be considered in a contract, it is important that how these terms are concluded in practice; In other words, the quality of the conclusion of the terms in the contract is of paramount importance; Provided that we define the conclusion of terms in contracts on the basis of the structure of the public order, it should be determined if all terms are consistent with public order or not. If they are not consistent, the terms are rendered invalid, and if we consider terms on the basis of free will, the terms may be concluded between the parties in any way and it has the legal effects of its own. Contracts with "standard terms", in the form of "contract forms", are a very important issue, because, on one hand, this could lead to the development of trade relations and an increase in trade contracts, and on the other hand, this economic development could be to the detriment of consumers or customers. Therefore, the question is, how the scope of such terms is defined? What are the benefits and risks of using “standard terms" of contracts, that makes them preferred to stipulations and terms after the conclusion of contract? Considering that the term of contract is derived from the will, could all the liability of the cancellation or detriments of a contract be burdened to one of the parties? In what cases, the consent and legal burden associated with the contracts in the form signing prepared forms are faced with serious challenges? What are the exceptions of concluding a contract based on "standard terms"? These are just some of the questions that the author of the present study attempts to answer.

Review of Literature

The history of terms of contract in German law could be traced back to the age of industrialization in the nineteenth century, during which the mass production of goods and services fundamentally developed economy. This phenomenon required regulations to develop the distribution of products and services. Since then, many businesses started to use “pre-formulated written” contracts[1.] In all these contracts, it was attempted to define terms and conditions by the parties[2], so that they could earn more economic profit. In fact, the parties bring the word “terms” next to contract with the intention that these terms become part of the contract in order to enable the parties to use the terms legally.[3] In Iran’s Civil Code which is based on Islamic jurisprudence, the issue of term and its effects is rooted in the establishment of Islamic government. Of course, it is evident that although

[1] It is also termed as contractual standard; In this study, contractual standard refers to those terms that are written in a pre-formulated form and are used for the fulfillment of at least three agreements. One of the basic terms of this type of contractual forms is the lack of coordination of the prepared text with customer’s demands.

[2] See Karl-Heinz Neumayer, Contracting Subject to Standard terms and conditions, in International Encyclopaedia of comparative law, Volume VII, Contract in General (1999), Arthur T. von Mehren, Chief Editor, 7 et seq.;
see also Konrad Zweigert/Hein Kötz, Introduction to Comparative Law (2nd Edition, translated by Tony Weir), Oxford 1992, 356 et. seq.

[3] See Karl-Heinz Neumayer, id., 7 et. seq.;
see Markus Stoffels, AGB-Recht, München (2003), note 15 et seq.;
see Christian Grüneberg, in Palandt, Bürgerliches Gesetzbuch, München 2010 Überbl. v. § 305 BGB, note 3 et seq.

the laws on term and its effects existed for a long time in Islam, the illiteracy of many ordinary people, made this issue not to become widespread for a long time; The lack of pervasiveness of laws on term in Civil Code may be rooted in the early days of constitutional period and at the same time with the approval of Civil Code in 1311, during which stipulation and its effects were mentioned sparsely in articles such as article 230 of the Civil Code; But it should be acknowledged that there is no precise report on "standard terms" in "standard form contracts"; however, in recent decades, at the same time with the rapid global developments and the development of international relations, this type of contract has entered Iranian legal circles.

1. Use of Standard Terms of Contract:

Standard terms are those agreements which are claimed by the issuer before the conclusion of the contract. First and foremost, no matter which one of the contracting parties declares it, what is important is that the parties should consider certain matters necessary between themselves for the conclusion of the contract. This type of agreement is termed "standard terms", but in the present context, this term is only applied to those terms which are unilateral and are prepared by the issuer in written and unchangeable form and which could be found in forms that have been developed for this purpose. The use of these terms allows the issuer to have a certain type of contract that is referred to as "standard terms of contract" in German law; it is evident that the use of these contracts entails its own benefits and risks. With regards to the development of using this type of terms in the Iranian legal system, the researcher of the present study deemed necessary to review and analyze these cases independently, without engaging to the margins.

A. Benefits of Using Standard Terms of Contract:

All companies today require to standardize their terms of contract in order to do business. This means that it is necessary to pre-determine the contractual elements such as the delivery of goods, transfer of risk, the method of payment, the scope of any warranties and its termination time, side regulations and etc.[4]; Issuing, writing or declaring these terms to the other party occurs before the conclusion of the contract. This matter is necessary in cases where the term affects the procedure of the contract, unless the parties agree to undertake another side agreement after the conclusion of the contract, the commitment or lack of commitment to which cannot undermine the nature of the main contract. In the process of standardizing the terms of contract, the parties can add clauses to the contract such as ownership will not be transferred until complete payment has been effected5. The benefits of such terms in the contract are raised when we observe that unlike the common law system of Iran, the civil law of Germany has not defined the contract requirements in a precise manner. This is true in particular in the area of private law, where the BGB constitutes an important piece of legislation, comprising more than 2300 articles and covering various areas of civil law, including contract, tort, property law, family law, and etc. Nevertheless, the mentioned laws are not exhaustive and are silent on significant issues. For example, the BGB only provides provisions for a limited number of types of contracts, such as contracts for sales, loan contracts and contracts for services6. But this law does not provide provisions for types of prostheses[7], and cases where the contract is forced

[4] See Helmut Köhler, BGB Allgemeiner Teil, 33. ed, Munich 2009, § 16, note 1.

[5] In this regard, article 380 of Iran's Civil Code states that: "In the case of the bankruptcy of the buyer, if he has retained in his possession the actual object of the sale, the seller can reclaim it and he can keep the object sold if it has not yet been handed over." The right of withdrawal mentioned in this article is the failure of the transfer of ownership. In the German law, if this issue is not mentioned in the contractual terms, it cannot be claimed.

[6] Barbara Grunewald, Bürgerliches Recht, 7. ed., Munich 2006, § 6 note 1 et seq.

[7] The civil law is silent in this case. Many scholars and jurists cite the quittance of the patient in surgical procedures to generalize surgeries to transactions and the effect of non-contractual liability which is one of the most important stipulations. These scholars and jurists draw a comparison that when the individual obtains an acquittal from contractual liability and limits or excludes his liability, he will not be liable anymore, except in special cases that we will cover in

to the person or is imposed at the time of remedy8; moreover, there are no precise provisions in the area of commercial contracts9 which are in relation to franchising and leasing. The German legal policy has fixed the shortage of contract laws by leaving the development of legal rules to the private terms of the contracting parties[10]. These terms help to develop the interests11 of parties, companies, and major corporations. These terms cover many important contractual issues, such as details of performance and payment, choice of law and place of jurisdiction.[12]

Review:

It is important to study the benefits of standard contracts or "standard terms" in order to determine their differences with internal rules.

1. **Rights of Contracting Parties:** Each contracting party has their own rights for the development of which they hold meeting. Thus, the option of meeting place has been considered for the parties, so that they could enjoy this right as long as they are in the place and could decide upon the application of their right. In the next section, we will separate the rights of the issuer of the terms and the rights of the party receiving the terms and the articles governing these rights.[13]

1.1. Rights of the Issuer of the Terms: The issuer of the terms has the following natural rights:

1.1.1. Unambiguity and Clarity of the Transaction Contract:

In this regard, article 382 of Iran's Civil Code stipulates: "If in regard to the expenses of the transaction or …, the custom and usage or these stipulations shall be followed. The seller and the buyer may also modify the above rules by mutual consent." It is understood from this article that even if the custom and usage stress on a case, the parties may change it based on mutual consent in order to remove any ambiguity and unclarity. This matter is well-supported in standard contracts.

1.1.2. Setting Rules and Regulations in the Absence or Silence of Law:

One of other advantages that Iran's Civil Code has also stipulated is the right of parties to determine the law governing the examination of the transaction (Article 968 of the Civil Code). Of course, the determined governing law should not be contrary to the customs and public morals (975). In this regard, based on the political situation of Iran, for example, using the governing law of the fake Israeli regime is considered contrary to customs and public morals. Therefore, reference to the content of such contracts is rendered invalid and this case is examined in accordance to article 971 of the Civil Code.

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next sections. For more on this, see: Asghari Mohammad Javad, Term of non-liability in Imamia Jurisprudence, Jurisprudence principles, Feqhi Journal, No. 4, Summer 1390, pp. 137-184.

[8] In line with what has been stated, the civil law does not have any provisions concerning this issue. However, based on a theory, in order to maintain public order, sometimes the government forces people to contract. In accordance with this theory, with the increasing intervention of governments in the economy by virtue of public order, several different laws have been enacted and have entered into literature of law. This has limited the freedom in trades and transactions and has forced people into deals. By studying the background and the causes of the emergence of these rules, it could be stated that courts may also force people into deals by virtue of public order. For more information, see: Olfat, nematollah, Public order and obligation to contract, Fegh va Hoquq, No. 7, Winter 1384, pp. 104-79.

[9] It is also called business contracting. In Iran, this issue is stated under the general terms of contract booklet approved in 1378. For more information, see: http://bit.ly/1nVppv8

[10] Cf Karl Larenz/Manfred Wolf, Allgemeiner Teil des BGB, 9. edit., Munich 2004, § 43 note 2; Barbara Grunewald, Bürgerliches Recht, 7. ed., Munich 2006, § 6 note 1 et seq.; Hans Brox/Wolf-Dieter Walker, Allgemeines Schuldrecht, 34. ed. Munich 2010, § 4 note 32.

[11] According to the same reason, some contemporary jurists emphasize the legitimacy of contracts with "standard terms"; Of course, the author of the present study does not disagree with these jurists to this extent, but his view on the issue of the acceptance of "non-contractual liability" or "limitation of liability" in "standard terms" is seriously opposed with the view of these jurists. This will be discussed in its place.

[12] See Wiebke Seyffert, Law of Contracts, in Business Transactions in Germany, Vol. 1 Newark, San Francisco 2006, Dennis Campbell, General Editor, § 10.08 [1], 10.112 et seq.

[13] The author has some objections about the rights of the issuer of the terms and will elaborate on the risks of concluding contracts using "standard terms" in the next section.

1.1.3. Delimitation of Contractual Liability:

The issuer of the term has the right to delimit their liability from the outset. In accordance to this theory which is based on the freedom of contract, the issuer may partly or completely exempt himself from liability[14]. In this regard, he could also contract out all their liability in options by mentioning it in the standard contract[15].

1.2. Rights of the Party Receiving the Terms:

This right that is termed "right to terminate" in Iran is raised when there exists the possibility of the application of options for the party receiving the terms. For example, the customer has the right to use his option of meeting place and to terminate the contract as long as he has not left the meeting place. Or in the case of the inspection of the property, by virtue of the option of inspection and incorrect description, he may terminate the transaction. This type of rights is a direct subject of the principle of the application of options in contract, and despite the term of waiver of options in the content of the contract, they will be eliminated to a great extent, except some options that some jurists do not consider as rights but as verdicts. Thus, even if the given contract waives it, there still remains the possibility to apply it.

1.2.1. Right of Awareness of the Subject and Object of the Transaction:

Customer or the party receiving the terms has the right to properly become aware of the subject of the transaction, and if this matter is not fulfilled, he may terminate the transaction by virtue of articles 438, 410, and 422 of the Civil Code. This is while denying this right from the beginning will nullify the contract, because the subject of the transaction should be determined.

1.2.2. Right to Have Adequate Time for the Conclusion of the Contract:

In ancient times, the philosophy of the option of meeting place was based on the fact that people should have adequate time to think about the transaction they aim to do. And if, after the conclusion of the contract, they came to the conclusion that their decision was wrong, they should be able to ignore the decision within a reasonable time. But at present time, that time is the first priority in business communication, contract papers are usually set in front of people, and even if it is mentioned that you have time to read them, it does not make the person to read all parts of the contract. This is more common in electronic contracts where the terms and conditions are provided in a certain link and people commit to it by one click without reading the content of the contract[16]. Therefore, the contract must be as such to allow the person to read and learn at least the important and effective terms of the contract.

1.2.3. Right to Enter Terms in Contract:

This is the natural right of individuals to be committed to certain matters according to their ability, needs and circumstances; The requirement for this right is that the person should not be faced with a standard contract, or in the case he faces it, there should be room for him in the contract, so that he could properly determine the part that he is able or willing to pledge himself to. In this regard, the civil law of Iran has not included any

[14] Emami Assadollah, Sadegh Abdi, Analysis of juridical-legal foundations of non-contractual liability, Mojtame' Amouzesh-e Ali-e Qom, Year One, No. 2, Summer 1378, pp. 106-77;
Arasta Mohammad Javad, Agreement on the limitation or exclusion of liability from comparative law perspective, Hekmat va Falsafe-ie Islami, No. 30, Winter 1388, pp. 22-3;
Tagharobi Iraj, Contractual liability or damage caused by the unfulfillment of commitment, Kanoon-e Vokala, No. 130, Spring 1354, pp. 113-98;
Farah Zadi Ali Akbar, The relationship between stipulation and agreement, Didgah-haye Hoquqi Quarterly, Faculty of Judicial Sciences and Service Management; No. 38 & 39, 1385, pp. 15-27.

[15] Zohairy Abdolamir, Waiver of options in statutory jurisprudence and law and investigating the terms of waiver of options in stipulation, Kanoon Monthly, No. 119 & 120. Shahrivar 1390, pp. 109-86. Of course, there are limitations for the individual in this regard. This is due to the fact that some scholars believe that some of the options are not rights but verdicts, like the option of inspection which occurs by seeing the sale and that is considered a verdict.

[16] Ghorbanvand Mohammad Bagher, The time and place of electronic contract, Pazhouhesh-e Hoquq Quarterly, Year 12, No. 29, Summer 1389, pp. 271-300.

important issue other than a general statement that parties should reach an agreement. However, German law today considers this right as part of AGB principles, and considers the invalidity of the transaction as the most important warranty for its enforcement. Of course, it depends on the fact that the party receiving the terms be able to prove that he has failed to enter his terms in the contract despite stating them[17].

B. Risks of Using Standard Terms of Contract:

Given the benefits mentioned in the previous section, the risks of this legal development become obvious on the other side of the issue. First of all, there is a risk that the issuer of the terms drafts the provisions in such a way that they burden the other party with all of the liability. A typical clause may limit or exclude the issuer's liability scope[18,] or allow them to breach the contract easily, or permit them to increase prices or supply substitute goods; other terms may even bound the customer to offset debts in order to prevent them from withdrawing from the deal, or another term may impose significant damages for delay on the part of the customer in the case of withdrawing from the deal or cancelling the contract.

When these terms are presented in a "take it or leave it" manner, the other party is likely to simply sign the contract, thereby agreeing to be bound by the contractual terms without limiting them.

In such a case, if the defined terms appear too biased towards the issuer, the other party could seek for an alternative with more favorable terms. However, in many industries, such as banking, insurance, automobile and retail, it is hardly possible to achieve better terms of contract[19,] because the defined standards of the contracts are the same to a great extent[20]. On the other hand, it is now almost recognized that it is the customer who must adapt themselves to the terms[21]. Hence, German law has attempted to prevent this issue by developing control mechanisms in this field to the benefit of the consumer.

2. Control Mechanisms of Standard Terms of Contract:

From what has been stated so far, we realized that the use of contract with standard terms can often cause many problems for the party receiving the terms to the extent that it makes them generally beguiled or owed; therefore, measures should be taken to stand against excessive profiteering. In the next section, we will discuss this case in the law of Germany and Iran. Before that, it is necessary to define the control mechanisms in German law on the basis of the general principles of law. These principles are originated from judicial procedures, and were later converted into law. However, control mechanisms in the Civil Code are defined based on the content of civil law and are defined in three scopes of religious rules, public order and public morals. There is another control mechanism which is the general principles of law and international custom which in no way recognizes some types of contracts or terms written in them.

2.1. Control Mechanisms of Standard Terms of Contract in German Law:

2.1.1. Obligation to Provide the Possibility of Bargaining in Contract Forms:

Control mechanisms of contracts[22] were developed initially in sections 134, 138 and 242 of BGB to protect consumer rights (section 13 of

[17] Pieck, Manfred (1996) "A Study of the Significant Aspects of German Contract Law," *Annual Survey of International & Comparative Law*: Vol. 3: Iss. 1, Article 7.

[18] See Konrad Zweigert/Hein Kötz, id. 357 et. seq.

[19] Barbara Grunewald, id., § 6, note 2.

[20] Wiebke Seyffert, id., § 10.08 [1] 10-113; Hans Brox/Wolf-Dieter Walker, id. § 4 note 33; Helmut Köhler, id. § 16 note 1.

[21] See Konrad Zweigert/Hein Kötz, id., 357; from a comparative perspective, see Karl-Heinz Neumayer, id., 7 et. seq

[22] See Konrad Zweigert/Hein Kötz, id., 359; Markus Stoffels, id., 9 et seq.; based on the concept of good faith and fairness as fundamental notions in contract law, as formulated in section 242 BGB, the courts have indeed rendered many clauses invalid.

BGB[23]), from potential abuses of parties and issuers of the terms derived from the freedom to contract in relation to terms and conditions. These terms are regulated for fairness and appropriateness of contracts and if they violate statutory requirements, they are considered null and void.

Although this view led to the recognition of bargaining in contracts[24], in practice, it is evident that negotiations will be futile, because companies are so powerful that there is no necessity for them to make concessions with the customer. Therefore, the customer who often lacks expertise and experience, is unable to negotiate with these companies25. Even if we consider bargaining as a positive phenomenon, we observe that in many cases where the costumer could use their position to bargain, they sign the contract quickly without carefully reading the content of the contract with the purpose to seek large profits. This makes the costumer to still face with serious problems, because they do not spend enough time and effort to read the small print[26.]

2.1.2. General Principles of Law on the Basis of Judicial Procedure:

Pay attention to this example: In a lawsuit, a young couple in Germany purchased furniture online. It was noted in the contract that the furniture has some problems and is therefore sold in a lower price. When the couple bought the furniture, they discovered many problems with it, to the extent that it made the furniture useless. The couple referred to the seller and asked him to repair the furniture but the seller refused to do so, noting that the contract of sale excluded the cost of repair. In this case, the German Federal Supreme Court[27] decided that the purchaser should not effectively be denied all rights when the only right available was useless. Therefore, the clause was unfair and the couple could return the goods[28].

2.1.3. Supervision on the Basis of the General Principles of Law:

The legal principles developed by the German courts in order to control unfair contract terms were codified in the German Act on AGBs of 1976 (AGBG). The AGBG which are codified by the law system of Germany are derived from the prior case[29;] this law introduced various new principles and expanded the scope of contracts between merchants30. This act applies to contracts between merchants and private customers. Council Directive 93/13/EEC of 5 April 1993 created a council for the supervision of unfair terms in consumer contracts[31.] This supervision is simply used to assess the standardized contracts by the provisions of general principles[32.] In order to achieve this directive, the regulatory framework for AGBs was embodied in a separate codification, but in the course of reforming the law of obligations33 in 2002, the German legislature incorporated the legal rules in new terms and conditions into section 305 of BGB

[23] See for the definition of „consumer“ (§ 13 BGB) and „entrepreneur“ § 14 BGB) B IV; consumer as every natural person who enters into legal transactions for purposes outside of his trade business or profession. In contrast, pursuant to Section 14 BGB an entrepreneur “is defined as natural or legal person or partnership with legal personality who/which acts within his trade, business, or profession when entering into legal transactions.

[24] Cf. Christian Grüneberg, in Palandt, Bürgerliches Gesetzbuch, id., Überbl v § 305 BGB note 7 et seq. correctly points out that the liberal contract theory underlying the German Civil Code (BGB) reflected a more ideal situation than reality already back in the 1900s.

[25] See Konrad Zweigert/Hein Kötz, id., 357; Wiebke Seyffert, id. § 10.08 [1] 10-113.

[26] BGHZ 2, 90; see Nigel G. Foster/ Satish Sule, German Legal System & Laws, Oxford, 2002, 409.

[27] Bundesgerichtshof = BGH

[28] If this was the case in Iran, the buyer could claim his right by the application of the option of incorrect description, or the option of loss or other options; In case he signed a contract in this regard, as mentioned earlier, he could ask the competent court to enforce ruling by the virtue that the option of inspection and incorrect description is a verdict.

[29] See Joachim Gres / David J. Gerber, The German Law governing standard business conditions (1977), Köln 1977, 1 et. seq.

[30] Handelsgesetzbuch, HGB

[31] Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts of 5. April 1993, ABl. EG 1993, Nr. L 95/29

[32] Christian Grüneberg, in Palandt, Bürgerliches Gesetzbuch, id, § 310 BGB note 23 et seq.

[33] Schuldrechts modernisie rungs gesetz

regulations, for the implementation of which they ratified EC directive.

2.1.4. Two-step Control Rules:

Sections 305 to 310 of BGB provide detailed rules for a two-step control procedure for terms of contract. As the first control mechanism, German law requires that no terms are valid unless it is incorporated. In the second step, the German Civil Code requires that the content also be checked. For this purpose, if certain terms have been incorporated into the contract, their provisions should be stated explicitly to avoid ambiguity. Moreover, the provisions of the law controlling the standard terms which comprise a general clause (section 307 BGB) and a catalog of prohibited terms (sections 308 and 309 BGB) and standard terms of contract which is the subject of section 305 paras. 2 and 3 of BGB as well as a section on unexpected and ambiguous clauses (section 305c of BGB) should be included in the contract. Otherwise, this contract is null and void in the eyes of the legislator34.

2.2. Control Mechanisms of Standard Terms of Contract in Iranian Law:

2.2.1 Article 975 of the Civil Code:

Article 975 of Iran's Civil Code provides that: "The court cannot enforce foreign laws or private agreements which are contrary to public morals or which may be considered by virtue of injuring the feelings of society or for other reasons, as contrary to public order, notwithstanding the fact that the enforcement of such laws is permissible in principle." According to this article, if the terms included in the contract are considered as contrary to public order, even if these terms are entered in the contract by mutual consent of the parties, they are not enforceable, i.e., the court does not issue a decision based on the terms[35]; In this regard, it is worth noting that based on this belief that, because stipulations such as the term for non-contractual liability can never be contrary to public morals, customs and public order, therefore, in any case it is correct to act upon them; In this regard, the author of the present study has an opposite view because when this theory was proposed, morals were defined as "public moral is a set of rules that a certain nation bound themselves to comply with in a given time and place based on nature and ethical morals and to the benefit of social relations. This nature and ethical morals are born from several factors like hereditary beliefs, noble habits, the inspiration by which men distinguish between good and evil, and religion which plays a large role in its quality. And people have humility towards this moral, even if law does not order them to do so[36]"; And finally, like some jurists, the proposer of this theory concludes that public morals in every nation is a combination of social customs, religious practices and intellectual judgments that constitute the public conscience[37]. Now, if we consider this issue in view of the mentioned definitions, at least in the sense that burdening all contractual liability on another person is considered a form of extortion and something immoral, or that breach of promise[38] in relation to the principle of informing the party receiving the terms of all legal aspects of the burden of accepting the contract which is certainly immoral, it could be stated from this view that such terms in standard contracts are contrary to public morals and therefore, the party receiving the terms may stand against them on the basis of Article 975 of the Civil Code.

Of course, this is subsidiary to the issue that although standard contracts have been used for a long time in countries such as Germany, it is something against public morals and customs. Hence, the judicial procedure in Germany has

[34] Zerres Thomas, PRINCIPLES OF THE GERMAN LAW ON STANDARD TERMS OF CONTRACT,P1-19.see: http://www.jurawelt.com/sunrise/media/mediafiles/14586/German_Standard_Terms_of_Contract_Thomas_Zerres.pdf.

[35] Emami, previous source, p. 83.

[36] Sanhouri Abdolrazagh Ahmad, Al-Vasit, Vol. 1. P. 399; and Sanhouri Abdolrazagh Ahmad, Mosader Al-Hagh, Vol. 3, p. 81, Quoted by Emami, previous source.

[37] Katouzian Naser, General rules of contracts, Vol. 1. P. 191, Quoted by Emami, previous source.

[38] Ghorbania Naser, Naghd va Nazar Quarterly, No. 1 & 2. 1377; Ghorbania Naser, Naghd va Nazar Quarterly, No. 17, 1388, Retrieved from: http://www.ensani.ir/fa/content/68104/default.aspx

passed laws to control "standard terms of contract", and it should not be assumed that as the life of standard contracts has not exceeded a generation in Islamic Iran, therefore, we could consider it as a moral issue. As a result, it is necessary for legislators and, particularly, judicial procedures to take the necessary action towards this issue in order to properly realize public morals in this relation.

2.2.2. General Principles of Law:

The general principles of law refer to those cases where the court waives to make decision upon the contract, if the terms observed in the given contract are contrary to the general principles, even if any agreement is made on the terms. Some of the most important instances of such cases include intentional negligence[39]; in the sense of "deliberate refusal of the fulfillment of duties to be fulfilled and fulfillment of duties not to be fulfilled", aimed at personal interest. Other instances are gross negligence[40] (a negligence which is not committed deliberately and consciously but the one who has committed it has behaved in such a reckless way as if he has committed the act deliberately and consciously), physical harm to individuals, contra proferentem[41], opposition with options which are considered as verdicts.

2.2.3. Consumer Law Approved Dated 1388/8/23 in Islamic Consultative Assembly

According to this law, if goods and services are transferred to the costumer by virtue of the contract, but the rules of this law are not adhered to, not only the issuer of the terms cannot benefit from his rights mentioned in the contract (because he has committed a crime), but also he shall compensate the damages; Of course, this law only applies to cases the focus of which is on the supply of goods and services.

Conclusion:

From what has been stated in this article, the author came to the conclusion that although the requirements of global development and economic cycle implies to use contracts with "standard terms" abundantly, these terms should not put the rights of the party receiving the terms at risk. Otherwise, it is necessary to benefit from various criteria that are recognized in each country, to prevent from profiteering derived from the basic privileges of this type of contract; Of course, the author of this study does not deny that norms and customs of a society could legitimize any type of contract, but he always considers the fact that many customs are moving in the course of life without scientific backing and if we face the phenomena from legal perspective, it is necessary not to resort to customs for recognizing a case, even if customs have accepted it but the term is detrimental for the society, because the consequent legal challenges of such types of contracts are difficult to compensate; Moreover, the author realized that Islamic rules on the conclusion of contracts can more effectively guarantee the rights of citizens than non-Islamic rules in this field which have been enforced for years.

Suggestions:

With respect to the investigations conducted in this study, the author suggests that:

1. ABGs be translated into Persian, and be used as a model for setting up regulations in relation to the conclusion of the new generation of contracts.
2. More control be established over the "standard terms" of contracts. The judiciary should put an end to the profiteering of important trade centers of Iran who abuse the unawareness of people from their legal rights. In this regard, the judiciary may lay down a procedure to investigate claims concerning contracts with standard terms.
3. It is essential to revise the articles of the Civil Code to simply account for the legal challenges posed in various fields such as those already

[39] Nekouyi Mohammad, Examples of the invalidity of the term of non-liability (A comparative study), Hoquq, period 44, No. 2, Summer 1393, pp. 253-273; Emami, previous source.

[40] Safaei Sayyed Hossein, The concept of gross negligence in relation to non-liability, International rights, No. 4, Summer 1364, pp. 165-196.

[41] Sharifi Sayyed Elhamodin, Hasan Hatami, Contra proferentem rule, Mofid Journal, No. 70, Esfand 1387, pp. 77-94.

mentioned in this article, so that parties will not inevitably resort to other laws such as the consumer law to apply regulations to control standard terms of contracts.

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