

Conditions for the Realization of Civil Liability Arising from Breach of Contract in Afghan Law

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ABSTRACT

Civil liability arising from breach of contract is one of the significant and challenging issues in Afghan law, where ambiguities in determining its conditions have led to legal disputes and complexities in interpreting relevant legal provisions. This article analyzes contractual civil liability and the necessary conditions for its realization, such as non-performance of obligations, existence of damage, causation, and the effect of the obligor's fault. The purpose of this research is to clarify concepts and propose solutions to reduce legal disputes and enhance order in contractual relations. The importance of this subject lies in strengthening public trust in the legal system and balancing the rights and obligations of contracting parties. The research methodology used in this article is descriptive and analytical, relying on provisions of the Afghan Civil Code and comparing them with theoretical perspectives to explore various dimensions of the subject. The findings indicate that contractual liability in Afghanistan's legal system is fundamentally strict, and fault is not required for its realization unless cases of force majeure, the act of the injured party, or the intervention of a third party exempt the obligor from liability.

Keywords- Breach of Contract, Causation, Civil Liability, Damage, Fault.

I. THE CONCEPT OF CONTRACTUAL CIVIL LIABILITY

Liability signifies a relationship whereby an individual or entity is held accountable for their actions and, in the event of causing damage or violating legal provisions, is obligated to provide compensation or rectification. The existence of liability in societies plays a fundamental role in maintaining order, justice, and fostering trust among individuals and institutions.

The term "liability" is a highly common and widely used concept in daily life. However, its meaning is neither simple nor universally comprehensible. On the contrary, due to its multiple interpretations and its connection to various fields and disciplines, it remains a complex term (Danesh, 2014, p. 112).

Liability, in essence, refers to the obligation or responsibility of an individual or entity for their actions and their resulting consequences. In legal contexts, it is classified into two primary categories: criminal liability, which pertains to violations and crimes and entails legal punishment, and civil liability, which aims to compensate for damage inflicted upon another party.

Civil liability is defined as the obligation to compensate for damage resulting from an act attributable to an individual (Barikloo, 2006, p. 22). Such obligations may arise from a contract and the promisor's intent, in which case the resulting liability is termed "contractual civil liability." Alternatively, the obligation may stem solely from statutory provisions, referred to as "non-contractual liability" (Jafari Langroudi, 2003, p. 645).

In other words, the obligor's commitment to compensate for damages caused to the other party due to non-performance of a contract is termed contractual

liability, as its foundation lies in the agreement itself (Safai, 1976, p. 125).

The Afghan Civil Code also addresses this issue in Article 730, stating: "If the obligor is unable to perform the obligation specified in the contract in its entirety or delays its execution beyond the specified time, the court may issue a judgment of liability against them, unless it is proven that they were not involved in the failure."

Thus, the scope of this discussion is limited to contractual civil liability, excluding liabilities that arise by operation of law and without any contractual basis.

II. CONDITIONS FOR THE REALIZATION OF CONTRACTUAL CIVIL LIABILITY

To establish contractual civil liability, the following conditions are essential:

1. *Non-performance of the obligation within the specified time*

When a person fails to fulfill their contractual obligation within the agreed-upon time, civil liability arises, and they are required to compensate the aggrieved party for the damage caused. In this regard, we can distinguish between two situations: one where the time is specified in the contract, and one where it is not.

First situation: The time is specified in the contract. In many contracts, the time for performing an obligation is specified within the text of the contract. Therefore, if the time for performance is defined in the contract, as soon as the obligation is not fulfilled by that time and the creditor suffers damage as a result, they can demand compensation from the debtor. (Nokhbeh, 2017, p. 229)

Second situation: The time is not specified in the contract. If the contract does not specify a time for performance, the debtor must immediately fulfill their obligation, unless the nature of the obligation requires a certain period to be allotted for its execution. In the latter case, the customary practices and rational judgment of the time required for performance would be considered. (Danesh, 2014, pp. 124-125)

2. **Existence of Fault**

In a broad sense, fault in legal and criminal matters has a common concept, referring to immoral conduct that the law prohibits. This conduct can manifest in various forms, either as a breach of contract or as an unlawful act outside the scope of the contract. (Nokhbeh, 2017, p. 230)

Some believe that contractual liability is an absolute responsibility, where the fault of the obligor is not required; rather, the breach of contract inherently gives rise to liability. In this view, whether the obligor acted cautiously or was at fault does not affect the realization of contractual liability. (Adl, 2006, p. 134). Other scholars consider fault to be a condition for the realization of contractual liability and argue that the obligor's fault is a prerequisite for liability. The obligor is only responsible for damages caused to the creditor if they are at fault for non-performance or delay. The necessity of fault means that the mere existence of damage to another person does not automatically make them liable for compensation, but the act in question must also be legally and ethically blameworthy. However, if the damage is not caused by the obligor's fault, and the obligor has taken all necessary precautions to fulfill the obligation, but the contract is still breached, they cannot be held liable for the damages. This is because no one can be expected to act beyond the ordinary standards of society. (Imami, 2004, p. 240). Additionally, if the breach of contract is due to the fault of the creditor or external factors in which the obligor was not involved and which prevented the performance of the obligation, the obligor cannot be held liable for the damages. (Shaidi, 2007, p. 252).

Regarding whether fault is required for the realization of contractual civil liability in Afghan law, there are differing views. Some authors believe that the breach of contract and resulting damage are sufficient to establish this liability. From this perspective, in Afghan law, contractual liability is absolute. (Qasemi, 2013, p. 248). According to this view, when the obligor fails to fulfill their obligation, contractual fault occurs, whether it is intentional or due to negligence. However, other authors argue that fault is necessary for establishing contractual liability and assert that mere non-performance is not enough; the non-performance must be due to the obligor's fault. Supporters of this theory refer to the ethical principle that states: "A person who causes damage to another without fault is not obliged to compensate." (Danesh, 2014, p. 127).

The legislator has endorsed the first theory, which holds that proving the non-performance of the obligation by the injured party is sufficient to establish contractual liability, without the need to prove the obligor's fault. Therefore, attributing the non-performance of the contract, without fault, is enough to establish the obligor's liability, and they must compensate for the damages caused by the breach. Only the occurrence of an unforeseeable and uncontrollable force majeure can exempt the obligor from liability. This is why Article 730 of the Afghan

Civil Code concerning the effects of contracts stipulates: "If the obligor fails to perform the obligation under the contract exactly or delays the performance beyond the agreed time, the court may issue a judgment for damages unless it is proven that the non-performance or delay was caused by a factor in which the obligor was not involved." Confirming this, Article 960 of the same law states that proving force majeure exempts the obligor from non-performance. Based on these articles, proving force majeure is the only condition that exonerates the obligor, and the obligor's liability is absolute. The law does not address the obligor's fault or lack thereof in relation to the damage caused.

3. *Existence of Damage*

The occurrence of damage is one of the fundamental and essential conditions of contractual liability, and damage must have been inflicted on the creditor as a result of a breach of contract. Therefore, compensation for damage claimed by the injured party is only granted if the creditor can prove that the breach of contract caused them damage (Katouzian, Vol. 4, 2009, p. 228). This is because the liability arising for the obligor due to non-performance of their obligation is solely based on the damage caused to the creditor as a result of the obligor's fault.

It is important to note that the damage caused to the creditor due to the obligor's failure to perform their obligation may arise either from a delay in performance or from absolute non-performance of the obligation. However, these two types of damage do not differ in terms of compensation. In both cases, the obligor is responsible for compensating the damages incurred. The significance of this distinction lies in the fact that, in the case of delayed performance, the creditor can demand both compensation for the damage and compel the obligor to perform the obligation. Conversely, in cases of absolute non-performance, the obligor is generally only required to compensate the creditor, and the obligation to subsequently perform the original duty is no longer relevant, as the compensation provided by the obligor effectively substitutes the original obligation. Consequently, the creditor does not have the right to demand both the performance of the original obligation and its substitute simultaneously (Danesh, 2014, p. 128).

Since the obligee is claiming damages, they must prove the damage suffered to obtain compensation. In some cases, despite a breach of contract, no damage may have been inflicted on the obligee. For instance, in a transportation contract, if the carrier delays the delivery of goods but such delay does not result in any damage to the obligee,

the damage requirement for compensation is not satisfied.

The Afghan Civil Code emphasizes the necessity of proving damage for compensation, as outlined in Article 776: "Whenever damage is inflicted upon another as a result of fault or negligence, the perpetrator is obliged to compensate for the damages."

Thus, if damage is caused to the obligee due to fault or breach of contract, the obligor is obligated to compensate for the damages. However, only damages that are certain and definite—not speculative—are compensable. In other words, when the claimant seeks compensation for special or consequential damages, such damage must be proven with reasonable certainty and cannot be speculative. Speculative damages arise when breach or fault occurs but the existence of current or future damage remains uncertain, as it depends on factors that are not yet established or clear.

Therefore, as a primary condition, breach of contract must result in damage to the other party to the contract. Additionally, the damage must be certain and definite, as speculative damage cannot form the basis for compensation (Rahimi, 2020, p. 213).

4. *Existence of a Causation Relationship*

The final condition for contractual civil liability is the existence of a causation relationship between the damage and the non-performance of the obligation.

In causing damage to another, various factors may contribute to the occurrence of damage. However, only damage that directly arises from a contractual breach and lacks any intervening factor between the inflicted damage and the breach itself is eligible for compensation (Katouzian, *Extracontractual Obligations*, 2008, p. 286). Thus, the obligor can only be compelled to compensate the obligee for damages if there is a direct relationship between their non-performance and the resulting harm. In other words, the damage must directly stem from the obligor's failure to fulfill their obligation.

The significance of the causal relationship lies in the fact that, in some cases, the damage may not directly result from the obligor's non-performance but rather from the influence of other external factors (Danesh, 2014, p. 129). The responsibility to establish this causal relationship rests on the obligee (Nazir, 2019, p. 180).

Article 779 of the Afghan Civil Code provides: "The court shall determine compensation in proportion to the incurred damage, provided that the said damage directly results from the harmful act."

According to this provision, if there is a direct relationship between the obligor's breach and the inflicted damage, the obligor is obligated to

compensate the harm. However, if the damage resulted from external factors and not directly from the breach of contract, the obligor is not required to compensate for the damage (Qasemi, 2013, p. 228).

Article 783 of the Afghan Civil Code further states: "If a person proves that the inflicted damage arose from an external cause without their involvement, from an unforeseen incident, compelling force, or the fault of the harmed party or another individual, they shall not be held liable unless otherwise stipulated by law or mutual agreement between the parties."

Additionally, Article 960 of the same code addresses the obstacle of force majeure: "If the obligor proves that fulfilling the obligation became impossible due to a cause beyond their control, the obligation shall be extinguished."

Based on these provisions, factors that exempt the obligor from liability for compensation include force majeure, the fault of the harmed party, and the fault of a third party. If the obligor proves that an unforeseeable and unavoidable external event, or the act of the harmed party or a third party, prevented them from fulfilling their obligation, they are exempt from performing the obligation. Conversely, if the impossibility of contract performance arises from the obligor's fault, the obligation remains in effect, and the obligor is still liable for compensating the inflicted damage (Rahimi, 2020, p. 215).

III. CONCLUSION

The issue of liability arising from breach of contract holds a significant position in Afghanistan's civil law. Contracts, as legal agreements between two or more parties, create obligations that, if not properly fulfilled, result in civil liability. Contractual liability for breach implies that the party failing to fulfill their obligations correctly is required to compensate for the damages caused by this non-fulfillment.

In the Afghan legal system, such liability is clearly outlined in the Civil Code, ensuring the protection of the rights of contracting parties. The primary objective of legislation in this area is to uphold justice and safeguard the interests of parties when one fails to adhere to their commitments. Generally, liability for breach of contract may lead to compensation for damages, enforcement of contractual terms, or rescission of the contract. This underscores the importance of transparency and oversight in contracts, as well as the need for precise execution.

In many instances, breaches of contract can result in the infringement of the parties' rights, particularly in critical economic or commercial agreements where financial interests are at stake. Hence, drafting clear and accurate contracts is paramount to preventing such disputes. The Afghan Civil Code mitigates the risk of rights violations through financial penalties and other legal measures for breaches, aiming to safeguard individuals' rights.

Ultimately, liabilities arising from contractual breaches must be addressed by courts with precision and expediency to ensure the parties' confidence in the protection of their rights. To prevent breaches, it is essential to strengthen legal oversight and raise public awareness about contractual rights and responsibilities. Therefore, it is recommended that to facilitate the resolution of contractual disputes, the judiciary—especially in the domains of commercial and contract law—should prioritize modern methods and innovative technologies to accelerate case processing and enhance public legal literacy.

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