

The Principle of Continuance in Public Service Contract

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Abstract

If we consider the aim of administrative goal to procure public interest and the necessity of its continuance, the limitation of its descriptive and executive principles in private law frameworks will be serious barriers against its realization. Administrative contracts with their special legal regime based on such principles of preference, authority and support which indicates the upper hand of public contract parties are described by the same basis. Public service principles which should be considered as extracted from the judicial verdicts of French governmental council are, *inter alia*, executive and descriptive foundations of public contracts. The principle of public service continuance with its legal functions and radical role in contract execution plays a vital role in realizing the goals.

Keywords: continuance principle, public service contract, successor right, financial and economic equation, public service principle, efficiency, governmental contract office

1. Introduction

Legal actions are based on the will of regulating social relations whether they are as a unilateral obligation or the contribution of two or more wills (agreement and contract).

Also, states use administrative actions to regulate society's affairs. In such actions conducted unilaterally by the will of government or bilaterally by the contribution of citizens, the volume of bilateral administrative actions has experienced an incremental process compared to unilateral ones overtime.

Shaping and expanding legal bilateral actions in the format of public contract should be seen as simultaneous as state emergence. The entrance of state to a group of people to devise, run and execute the affairs bilaterally is good and emanated from requirements while the government does not accept well – known frameworks of private laws and relations based on the equality of contract parties due to its role in the society as the incumbent of public affairs.

In French term, state¹ did not endure traditional frameworks of private laws by such principles as public power², public services³ and public interests and devised a new plan by preferential, supportive and authoritative clauses⁴ which can be interpreted as special legal regime of administrative contracts. Therefore, the plan based on state's upper hand in administrative contracts does not limit to conclusion step; rather, it is rendered in execution, interpretation, liquidation and even trail of public contracts' disputes. Obviously, administrative contracts mean public service contracts under a special legal regime rather than contracts that state use them like natural persons to purchase services and goods.

Based on different principles including public service, principles governing public contracts and principles governing administrative actions (from the efforts by French judicial procedure), the states have considered an unmatched role compared to private contract party overtime.

In contract execution and interpretation step at private laws, parties will is the final word of all discussions. Such

¹ L'état

² La puissance publique

³ La service publique

⁴ Les clauses exorbitants

faith can lead into liquidation, mitigation and/or completion of contract while in administrative contract laws; contract interpretation is based on public service principles and principles governing administrative contracts. All these principles indicate trivial role of equal will governance even in interpretation step which leads into contract survival and parties' obligation to its execution and preventing public services closure. Among public service principles, "continuance principle" plays more highlighted role in administrative contract interpretation and execution since such contracts are target – oriented, that is, the separation and distinguishing target of contract from private interests and its belonging to procure public interests and the necessity of its continuance.

In present article, we point out the role of "continuance principle" in public (administrative) service contracts and its status in mitigating financial relations among parties to prevent public services closure.

Initially, "continuance principle" concept is clarified and then, the status of this principle is addressed in determining the rights and commitments of parties in public service contracts.

2. "Continuance Principle" Concept

Like many other social sciences, definition and clarification of concepts play a vital role in laws. Concept definition and clarification is notable in two parts: it determines definition field on the one hand and it makes it possible to recognize and count constituents of its concepts (Sadeghi, 2005: 19). Some authors (Geny, 1932: 152) have considered concepts definition as a process of legal technique and a relevant tool to clarify the terms.

Public services roots in public interests. Based on a public service principle that its root can be found in judicial verdicts of French governmental council and its impacts are observed in French Civil Law and even Iranian Civil Law, the impossibility to stop and even to limit public affairs is due to the credit brought by public services for political regime. Based on the trust by citizens to public regime in conducting public affairs and following to public servicing rule, administrative system is obliged to conduct public services or to monitor on right execution of public affairs under any normal, extraordinary or emergent conditions.

"Continuance principle" is a social concept which can be expanded or limited commensurate with time and place. In a broader sense, any action with public service nature can be subjected to this principle. Some authors (Molayi, 2014: 169) have seen "continuance principle" in a broader sense and as an important tool even in judicial supervision on administrative action to prevent breaching citizens' rights under such titles as public and governmental interests and they believe that its big implication is "administrative services continuance principle". Based on such analysis, any nay closure, stop, limitation or mitigation of administrative service is prohibited and administrative organs are obliged to continue their services in broad, efficient, proper and desired manner. Therefore, any action or leave of action which cause the closure or interference in public affairs is prohibited. In France and according to verdict by State council in 1979, as social principle, "public services continuance" is recognized a prevalent legal concept and normative value in the Constitution Law and also in upstream document (French Constitution Law, Principle 5, 1958).

In the scope of private laws, lawmaker has accepted "the necessity of contracts" along with "commitment by committed person's cost" inferred by some authors (Moosazadeh, 2012: 575) as "continuance principle" in private laws. Assigning "continuance principle" to public services would prohibit any permanent or temporary stop in public services and public authorities may be subjected to penal, civil and law enforcement responsibilities against such obligation (Dupuis, 2007: 55; Islamic Punishment Law; article 576 and 597).

To procure public service continuance, one can refer to the necessity of granting facilities to clients to execute the contract, to compensate contract private parties in the case of changes in contract moods and occurring unpredicted events (article 20(c) of contract general conditions).

It seems that the benefit of running is in rapid, full and efficient execution of administrative contracts by resorting to such principles as public services "continuance principle". Obviously, public service continuance has some extraordinary assistance and out of contract through special and necessary payments that some authors call them as "general traits of national systems" (Shamei, *ibid*: 83).

3. Basics and Resources of Continuance Principle

The basics of "continuance principle" are seen in citizens' beliefs to political governance (Molayi, *ibid*: 169). In addition to the approach which considers trust to governance as the basis of public service continuance necessity and is justified by citizens' reliance to public service continuance, if we consider governance as the unique, independent and absolute power against foreign forces and states as well as domestic groups and persons (Ghazi Shariatpanahi, 2004: 181), keeping such unique, absolute and independent power needs to satisfy economic, cultural and social needs of citizens. Any neglect in this regard can lead into undesired consequences and can challenge governance.

It is based on such approach that client has no right to cancel, suspend and not to execute the contract in the case of increases in the costs, hardness or not consume – efficacy of the contract and it should perform its commitments based on “continuance principle”. In contrary, to prevent interference, stop or closure of public services under unpredicted circumstances, the theory on the action of ruler and administrative failure would help client.

The resources and roots of “continuance principle” can be observed in radical and normal laws and regulations. The foundations of “continuance principle” are remarkable in Constitution Law. Article 5 of French Constitution Law reads: “The President monitors on the execution of the Constitution law. By his supervision, he/she ensures regular performance of general powers as well as the continuance of state⁵.” Some authors (Lebreton, 2007: 162) believe that “continuance principle” is the border between respecting citizens’ rights as well as the rights and assignments of public officials. In French law, all actions and decisions by administrative and public officials have the nature of public services whether taken by natural or legal persons irrespective of industrial, commercial, administrative or urban fields. Based on such broad interpretation of “continuance principle” in public services, some authors (Hodavand, 2010: 202) have expanded its coverage on France to “administrative initiatives”.

In addition to assign “continuance principle” to principle 58 of the Constitution Law (1958), French State Council has assigned inspiring roots of this principle to general principles of administrative laws in various verdicts. One of the most well – known verdicts by French State Council was TISICALI in 2003 by which the continuance of public service in telecommunication was seen as a task of public officials. In a similar verdict, French State Council announced illegal the decision taken by an administrative official to close schools three month earlier (cited by Hodavand, *ibid*: 2003).

In another verdict in 13 June 1983, French State Council moved forward and introduced “continuance principle” in public services as a “fundamental principle” (Chapus, 2001: 521).

In contrary, employees’ right of strike as personal right is prioritized to “continuance principle” which is based on public interest (Rezaeizadeh, 2012: 37). Based on “the fundamentality of public service continuance principle”, in its verdict dated 25 July 1979, French State council admired the strike right of employees in governmental organs and also admired the superiority of “continuance principle”. Some authors have supported this theory in Iranian laws (Gorji, 2011: 214) and believe that abstract and unlimited usage of strike right is in contrary to “continuance principle” of public services and strategic mission of the state which damages it.

The roots of “continuance principle” can be also observed in Iranian Constitution Law. By the concept of different principles in Constitution Law, one can infer this principle especially in principles 68, 63, 119, 130, 141, 132 and 145 confirmed by some authors (Rezaeizadeh, *ibid*: 38). According to above principles, administrative officials in different powers are obliged to respect certain protocols of the continuance of attendance by different authorities in public service arena. In terms of comparing the priorities and principles 5, 57, 110 and 110 of Iranian Constitution Law, leadership service “continuance principle” on Islamic community is obvious.

To supplement extraordinary condition regulations and to prevent stopping, limiting or closing or even interfering service order by Executive Power, in principle 132 of Constitution Law, the lawmaker has talked about the impossibility of ministers’ interpellation, the impossibility of giving no-confidence motion to them, the impossibility of revising Constitution Law and referendums so that one can infer the roots of public service “continuance principle”. Such limitations are due to the fact that under such circumstances, the management of the country is not normal and, on the other hand, in the case of no-confidence motion to ministers, one cannot stop the affairs of the country and it is a expedience to conduct referendums or revision the constitution Law when there is no inflammation in the society and state’s services are not closed, limited or stopped (Hashemi, 2000: 351; Madani, 2009: 325; Mehrpour, 2011: 298). In the level of next rules, one can refer to article 64 of Employment Law as well as articles 6, 13, 17, 19, 20, 21 and 25 of Domestic Service Management Law. To show loyalty to “continuance principle” and the impossibility to close public services, lawmaker has considered less items to terminate a contract by administrative termination including article 46(a)(c) of Contract General Conditions considered as “over one tenth of contract” or “two months” to define delay in starting the operation of contract subject and “lower period” is seen as termination benchmark.

4. The Impacts of Continuance Principle

Undertaking the contract and economic/financial equation principle of public contracts can be investigated as the impacts of “continuance principle”. However, some authors (Molayi, *ibid*: 513) have considered joint

⁵ Continuité de l’ état

cooperation of public contract parties as the most important foundations of “continuance principle” while one should note that they have also considered “public interest superiority principle and “continuance principle” as the foundations of cooperation principle. Since expression of basics of concluding public contract is out of the scope of present paper, we address to the impacts of public service “continuance principle” in the context of contract implementation summarily.

4.1 Contract Execution in Trust

The right of contract execution in trust called as “the authority of temporary dispossession or running the affairs in trust” (Ansari, *ibid*: 198) means to continue the execution on contract provisions by the same department toward public interests which considers all costs in client’s account (Mossazadeh, *ibid*: 612). Below, we study the concept of contract execution in trust and then its impacts.

4.1.1 Concept

Contract execution in trust which can be justified by public interests priority principle and “continuance principle” is an obligating technique to perform contractual commitments without referring to Administration of Justice. In other words, since public contract private party (client) may refuse performing his commitments and delay contract execution as well as public services and public interests and a public affair is interfered or the client could not do its executive jobs due to internal problems (not related to contract) despite of its good will and contract cancellation is not in public interest expedience or its arrangements are not ready or administrative cancellation is along with legal problems, contract execution in trust is suggested as the final solution in public services and preventing its closure.

Contract execution in trust has backgrounds in private laws since one can infer it in articles 221, 222, 237 and 237 of Civil Laws and its judicial procedures also confirms such insight. Verdict 1311/4/5-432 of Supreme Court General Board reads:

The verdict by the court of the province (by which claimant has been committed to perform determined operation in predetermined period and its expiration would not deprive his responsibility and commitment) and since he has not attended to conduct his commitment, the court orders him to repay a part of costs and confirmed by arbitrator. This verdict is issues based on article 222 of civil law and there is no problem in this regard. Contract execution in trust does not only limit to executing the contract but also it involves all commitments and tasks of client in the contract including workshop and the third party protection, insurance and other necessary supervisions on workshop, utilities and buildings subjected to the contract. In the case that client does not perform such commitments and tasks; employer has the right to do such commitments instead of client and on his account (Emami and Ostovar Sangari, 2014: 197). Such approach can be seen as the execution of public service “continuance principle” based on waiving contract relativeness principle. It also reminds article 22 of Contract General Conditions approved in 1975.

Until 2008 when Contract General Conditions were communicated, contract execution in trust was conducted by article 22 of Contract General Conditions approved in 1975. According to this article, whenever client neglects in doing a part or whole items mentioned in article 21 (client’s tasks to protect workshop, the third parties, insuring the buildings and utilities subjected to the contract, workshop lighting, the security of the workshop, a minimum pass-way and so on.) and causes damages and refuses its commitments, the employer has the right to conducts these commitments instead of client and pays the costs from his credits or guarantees. In this case, any claim by client on such payments as well as the discretion of employers in terms of offence or paid sum has no impact.

Article 22 is not considered in formulating Contract General Conditions (1999) and some authors (Amani, *ibid*: 198) have considered the execution of contract in trust subjected to General Contract conditions.

4.1.2 The Impacts of Contract Execution in Trust

In contract execution in trust, the department dispossesses on behalf of contract private party. In other words, it takes back the workshop given to client to realize public goals and performs his commitment on his behalf and computes the financial costs of such action (contract execution in trust) from client’s account, that is, profits and losses are recorded in his account. Materially, such dispossession has no need to refer to judicial authorities and arbitration and the department can conduct clients’ commitments in its own discretion.

As mentioned before, such technique of running the contract is based on public service “continuance principle”, public interest priority and is relied upon contract. Based on such analysis, some authors (Ansari, *ibid*: 199) have clarified the issue and have assigned it to contract:

In this case, the concluded contract is not terminated and is survived. Therefore contract execution in trust differs from all moods in which the contract comes to an end and the relations are cut. Although contract execution in trust is a guarantee for execution but it does not terminate the relations between parties and is not a temporary situation.

If we consider contract execution in trust profits and losses as client's assets, the employer has the right to provide needed costs to continue the job from client's receivables. In contract execution in trust, in addition to respect public interests and to keep collective interests, it is responsible to respect to client's interests through providing a clear invoice of incumbency days. Obviously, if the department does not respect client's interests in contract execution in trust and it leads into undesired costs to client, the client has the right appealing and can refer to competent court for monitoring the works by department whether the competent authority obeys general rules (principles 34 and 159 of the Constitution Law) or Contract General Conditions (article 53) and or reference to Technical High Council Arbitration.

4.2 Economic and Financial Equation Principle

Contract financial equation principle and its result can be analyzed in the scope of public service "continuance principle" impacts and the commitment of public and administrative official to this principle. Below, the concept of financial and economic equation principles and its impacts are pointed out.

4.2.1 Concept

Normally, changes in contract conditions should not vibrate contractual relationship and destroying it since the principle of contract necessity is the context of conclusion, execution, interpretation and even cancellation by public and private laws (Habibzadeh, 2011: 220). When financial and economic equation of the contract scatters and predictions conditions change under the influence of external factors not assignable to parties' will, the nature of changed commitments would put the committed party in serious economic, social and fault bottleneck and doubts are raised on the way of interactions between parties in contract execution. Under such circumstances, contract balance would scatter and damage private party which finally damages the administration of the contract.

Financial equation principle⁶ is the result of respecting public services "continuance principle" which is relied upon cost/benefit theory (Molayi, *ibid*: 529). Since administrative contracts are the techniques to conduct public services in bilateral legal actions, one can say that public services continuance is seen necessarily in such actions. Realizing public service goals requires its continuance which undoubtedly makes it hard to have utilitarian glance at contract. Hence, it is said that the parties of such contracts are seen as something more than two parties. They are colleagues and public service continuance players. On the same basis, French jurists believe that the most important reason to support client is to provide services prevent their closure even when they do not agree to help such clients under unpredicted conditions (Laubadère, 478, 1994).

Different theories are provided concerning the cooperation of parties in executing public contracts in which stakeholders are their parties (citizens). If we construe the execution of contract in the field of public contracts as a game and consider the parties namely department and client (private party) as players, then we should interpret the outcome of economic and financial equation principle as "win – win" which is expressed as "contract equation right" in France (*droit à L'équilibre du contrat*). Under such circumstances which bring win for department (preventing the closure and interference in public services), client's interest is in right execution of contract commitments justified by "continuance principle" and the impossibility of closing public services (for more details on contrary opinion, see Molayi, *ibid*: 592).

One may say that by paying costs more than normal amounts in contracts, the employer has helped private party of the contract. However, one should know that the department is benefited from paying additional costs due to unexpected events and even bankruptcy of private party since the initial commitment of the department is to conduct and continue public services and the failure of private party in conducting the contract, interference, closure and even limitation of public services would bring more damaging impacts on department. Under such circumstances, the department prevents more losses by resorting to public contract financial and economic equation principle since its can construe it.

4.2.2 The Impacts of Executing Contract Financial and Economic Equation Principle

Concerning financial and economic equation principle in the contract, it should be noted that one can achieve contract financial and economic equation principle by retaining the contract based on public services

⁶ Équation Financière

“continuance principle”. Changes in contractual verdicts in administrative laws field are in contradictory to private laws based on personal attitudes that have impacts on administrative laws (Ansari, *ibid*: 156):

4.2.2.1 Theory of restraint of princes

It means decisions and initiatives taken by the department which causes problems or costs against contract private party. Its root backs to loyal and exploitative administrations with political motivations especially in French laws history and Arabian nations. What it means today as its executive context is the superiority of public interests and the necessity to undertake public services: it is transformed during historic events to limit and legalize the authorities of governmental officials toward fairness and justice (Ansari, *ibid*: 214).

Provided definition on this concept is based on below elements:

- It is public officials’ willful actions. Therefore leave of action or faults of public officials are not in the scope of restraint of princes.
- Restraint of princes should lead into changes in the equilibrium and equation of the contract financially. Therefore, if restraint of princes by public officials destroys the grounds of contract execution and one cannot execute it even by higher costs, it cannot be considered as restraint of princes.

Some authors (Shamei, *ibid*: 280) have considered restraint of princes as the command of central government officials: “this theory is based on French legal system which aims at compensating the losses of government and administration contract party.” Therefore, the theory of restraint of princes is unique to governmental contracts as an exclusive rule and a basis to help clients in executing public service contracts and its continuance which cannot be considered as an excuse for financial usages (Laubadère, 1992, 1070).

4.2.2.2 Unpredicted Affairs⁷

The second factor which leads to contract financial and economic equation principle in construing the contract compared to public services “continuance principle” is unpredicted affair. These events should not be confused with violence by force since it refers to unpredictable and uncontrollable events out of the will of parties which make it impossible to execute the contract (Safaei, 2010: 216). Articles 227 and 229 of civil laws and article 43 of Contract General Conditions refer to such events. However, unpredicted events by the assumption of not being assigned to contract parties’ wills would not make it impossible to execute the contract and would increase its execution costs and, in other words, they make its continuance non-economic (Molayi, *ibid*: 534).

Unpredicted events which can scatter contract financial equation and economic balance and can be used in construing public contracts by relying upon “continuance principle” include abnormal, sudden and unpredicted events, realized conditions fully independent from the with and intervention of contract private party effective in the economy of contract (Motameni Tabatabaei, *ibid*: 361; Ansari, *ibid*: 227). Unfortunately a confusion is seen between unpredictable events and violence by force in the works of some authors (Kiani, *ibid*: 174) which can be contemplated in expressing their concepts, works and effects on mixed public contracts.

Unpredicted affairs have no normative status in laws and no clear definition is provided on the in current domestic regulations while some authors (Katuzian, *ibid*: 81) have separated them from violence by force and believe that unpredicted event does not make it impossible to execute the contract even though makes it extremely difficult and scatters desired equation between parties (see Bigdeli, 2007: 703; Alavi Ghazvini, 2010: 133; Sanhavary, 2011: 463; article 373 of Swiss Commitments law; article 147 of Egyptian Civil Law).

Article 37 of Contract General Conditions has predicted the way to mitigate public contract in building section in the case that the contract is delayed over one year so that the contract should be mitigated by changes in its price indices. Such kind of mitigation has no relation to mitigation philosophy subjected to article 1082 of civil Law and article 41 of Labor Law as supportive arm for worker and his wife; rather it is mitigation due to increases or decreases in the prices of merchandises over the period of contract execution which involves positive and negative price fluctuations. Such kind of mitigation can be interpreted as lawmaker’s belief in “continuance principle” to execute the contract.

Usually, contract execution is long time and during contract execution, price fluctuations (often, increases) shed light over the contract. In countries which suffer economic instability and increases in the prices of goods and services are natural, resorting to current conditions has undesired impacts. On this basis, article 37 of Contract General Conditions has subjected long term contracts to price mitigation. In the case of any disagreement between private party and department in contract mitigation, the court would mitigate the price by considering

⁷ Imprévision

the documents, expertise opinions and other evidences (Bigdeli, 2007: 703). However, it should be conducted by extreme scrutiny and precise in governmental contracts since in some cases; public contracts have remarkable interests for contract private party due to lack of monitoring in execution, interpretation and mitigation.

4.2.2.3. Employer's Fault

"Compensation necessity" principle is prevalent in normative legal system so that some authors (Bariklu, 2014: 17) have considered a divinity background for it and have resorted to Holy Quran and narratives to prove the necessity of compensation and have expressed different basics based on social and philosophical principles such as liberty, equity, justice, fairness and public interest as the necessity of compensation (Katuzian, 1995: 110). Theories on personal fault, risk, absolute risk, risks for unconventional actions, risks form material interests, typical fault, mixed fault and common assignment have their own proponents. According to an insight relied upon Iranian civil laws and Imamieh jurisprudence, civil liability is based on common assignment of damaging action to a person and fault is a factors which can help the judge in diagnosing such assignment (Bariklu, *ibid*: 66).

As mentioned before, compensation liability principle is obvious and undeniable and in Iranian Constitution Law, one can see this issue superior to highest governance issue (judgment) in administrative liability basis. In principle 171, lawmaker has predicted the possibility of a claim by assigning to the fault or mistake of judge in verdict, subject, verdict compatibility with subject and compensation. In this principle, the liability of state is extended from material to spiritual compensation. Therefore, it is not possible to exclude public party from the liabilities due to contractual fault. Even in civil liability subjected to article 11 of civil liability (1960) in which the state is liable toward personal fault of its personnel or administrative actions (Katuzian, 1995: 96; Ghamami, 1997: 119; Moshtagh, 2010: 257; Bariklu, *ibid*: 146).

In the scope of state civil liability with a public law approach, some authors (Zargoosh 2010: 257) have studied liability based on state's lack of fault in detail as well as the basics of state's lack of fault liability in violence by force in public law teachings such as equity in public costs, legitimate expectations, loss organizing theory, public service theory, entitlement theory and social correlation theory.

Therefore, the image of state's lack of responsibility or accepting a score for state compared to other persons in contractual or non-contractual liability is an incorrect description. By considering different opinions imagined in western laws for state even on damages from terrorist attacks or illegal gatherings for citizens, one can support "state absolute liability".

According to article 47 of Contract general Conditions, in the case of department's contractual fault, private party can compensate its losses through a competent court while it cannot not refuse doing public services and cancelling the contract since contract cancellation requires interfering, closing and stopping public services otherwise the fault is in a manner which leads to closing public services.

Article 28 of general conditions has described delay in delivering the land to execute the contract as implication of fault. Part one of article 28(c) reads:

Whenever employer cannot deliver the workshop so that client can conduct its work based on the schedule and such delay exceeds one month, to compensate delay in delivering the workshop, employer pays added cost for client computed by below equation provided that advising engineer confirms that client has no illegitimate delay in delivered locations.

In part two of article 28(c), lawmaker has considered longer period to deliver the workshop that its final solution under certain circumstances is the right of cancellation for private party. However, instead of cancellation, lawmaker has used the term "contract termination" while it is in fact a cancellation right due to lack of conducting commitments by public party.

In Contract General Conditions document, no other cases are mentioned as employer's fault but private party can refer to general rules on contractual liability or civil liability to complain, request for compensation and contract financial and economic equation to execute public services "continuance principle" if the employer commits a fault in executing contract provisions including payments, conducting governance tasks to implement the contract (possession of lands in a constructional plan) and so on. To complain based on civil liability or contractual liability private party has no choice than referring to general courts and prove the existence of valid and enforceable contract, prove the offence of public party, occurred losses and common causality relationship between occurred loss and the offence and can demand for compensation for delays in repayment of trial cost (article 522 of Civil Law Procedure) (Bariklu, *ibid*: 28). However, some authors (Molayi, *ibid*: 538), in France, faulty is obliged to compensate losses through France Banks.

Unfortunately, there is no decisive verdict in Iranian laws and judicial procedure on obliging private party to assist. Only, article 29(h) of Contract General Conditions reads: “mitigating the rate of contract by predicted conditions should be on contract private terms” and this is a way to oblige contract public party to assist client. Some clients (Emami and Ostovar Sangari, 2014: 221 – 226), have provided ways in jurisprudential resources and civil laws to justify above theory such as “contract implied term”, “cheating”, “the theory on prohibiting losses to others in executing personal rights” (Principle 40 of the Iranian Constitution Law), “no damage rule” and “prohibition of distress and constriction” rule. Some authors (Esmaili Harisy, *ibid*: 218) have evaluated new conditions and its mitigation in the format of contract “new price”.

5. The Function of Continuance Principle

By accepting all economic, cultural and social responsibilities for welfare state (as called servicing state in 21st century), it is obliged to procure above facilities and failure in doing this can bring harmful damages.

Accepting new commitments by governments should be seen beyond the insight which discusses on the intervention by general entities as well as Executive and Judiciary Powers in domestic economy studied under the title of “public law economics” since such intervention and commitment admission should looked for in performing states’ governance tasks while states look at public law economics due to their interests.

In the scope of administrative contracts, continuance principle can be studied in different situations”

5.1 The Function of “Continuance Principle” in Contract Conclusion Step

In selecting public contract’s private party, the department is no free and selecting the parties needs to pas special administrative protocols. Performing such protocols to select private party is based on public interest superiority, transparency necessity and competition. Care in selecting private party and inflexible regulations in this regard indicate the importance of public services and continuance as well as the necessity of care in selecting a person who believes in this principle and its effects.

In articles 220 and 225 of Civil Law, it is talked about the common role of parties in construing the contract and determining the rights and commitments. If we plan to put “continuance principle” in conceptual territory, we should use common role and common glance at state’s governance commitment. However, it seems that the governance of public law basics and principles in the scope of administrative field and the governance of this approach on contracts, one can speak on the acceptance of new legal regime and, consequently, private laws and to avoid traditional and jurisprudential structures and frameworks that foster suspicious on believing in the basics of private laws in construing public service contracts.

5.2 “Continuance Principle” in Construing and Executing Contract

As mentioned, like other principles on administrative services, “continuance principle” is shaped by legal procedure in French administrative courts and they have invented these principles in construing parties’ wills based on public services theory. Public services “continuance principle” is emanated from a verdict in “Bordeaux Gas Company” in March 30, 1916 when “unpredicted events” doctrine was officially accepted to respect public interests and preventing any lag in charity services. Accordingly, the state is obliged to help client in order to continue and prevent closing public services providing. Helping the client is conducted to continue public services. Accepting this theory which is in contrary to private law teachings including contract necessity principle is justifiable in the shadow of higher expedience such as public service continuance and preventing its stoppage.

Some authors (Shamei, *ibid*: 183) believes that accepting public services “continuance principle” is to confirm state’s mutual task in ensuring relentless execution of public services. As seen, the broad scope of “continuance principle” in executive section would show the interpretation and mitigation of the contract. Based on such attitude on “continuance principle” and the obligation accepted for department, contract private party and department would collaborate in contract execution in trust (substitution right) and respecting the principle of financial and economic equation in executing public services “continuance principle”.

6. Conclusion

In Iranian laws, administrative contract has a legal system independent form contracts under Civil Law. Such independence in regulative system has led into independence in the scope of concluding, executing, construing and even liquidating governmental contracts.

Contracts under private laws are construed by exploring parties’ joint intention through the text of contract or other reasons and by the help of some implicit supplementary to complete the contracts including custom, supplementary and interpretative regulations, fairness and good faith. In public law, however, contract

description roots in administrative rights in addition to the governance of faith and contract commitments necessity. Among public service principles, “continuance principle” has a special status in executing the provisions of the contract as tool of public entity to perform social commitments.

This approach that its roots should be looked for in French Council’s verdicts are seen in Iranian lawmaking including Constitution Law, Civil Law, Public Auditing Law, Domestic Service Management Law and Contract General Conditions as a downstream document of governmental building contracts and is remarkable as a components to describe governmental contracts.

As a fundamental principle of public services and effective in its interpretation, continuance can be seen in special contractual situations. The outcome of describing such positions and believing “continuance principle” would be a construe for contract office in the benefit of continuation of services and preventing its closure and interference in public services and finally making contract efficient.

Running the contract in trust and keeping administrative contract financial and economic equation, employer’s fault, unpredictable events, legal and contractual mechanisms and posing commitments more than normal contractual commitments are all rooted in public services “continuance principle”.

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