

## Representative Confession Effect in Iranian Civil Proceedings

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### Abstract

In criminal affairs of the law of most countries, including Iran, representation confession all is seen with skepticism. However, the countries that do not accept confession in criminal matters in any way, believe that confession is always to the detriment of the accused and the representative with his confession creates effortlessly further ado for the accused. But it is not always the case, because sometimes the lawyer may provide him the exemptions and the commutation of the sentence with his original confession to committing the crime. In article 205 of General and Revolutionary Courts Procedure Code (Civil Affairs) adopted in 2001, Conclusive confession has been appointed non-substitution. Conclusive confession is the one that a confessor accepts a demand that is asked in the column or it is the subject of the petition. Conclusive confession is against the confession of dispute proof preliminaries. Confession to the premises of the lawsuit will not end and will not accompany by accepting the claim. Basic reasons for this decision are: The original confessor, non-harmful confession against the other, the necessity of observing the interest of the client, the consensus of jurists etc., but none of these reasons can justify impossibility substitution of confession. Therefore, the article aforementioned was critical and its reformation is proposed. The main aim of this study is to investigate the effect of confession in civil proceedings in Iran; the research in this paper is organized as a library and survey method and it is based on analytical methods. First, the literature of the research is described and as a result, according to analytical findings, fundamental recommendations are proposed.

**Keywords:** confession, representative, crime, civil rights, claims

### Introduction

The importance of confession in criminal matters and even in civil affairs is to the extent that legal scholars call it the Queen of reasons. Its importance is to the extent that it is always cited in the claim as the most important reason. Basically, in administrative affairs the accused confession is not relevant without being on the validity the research is done, and there is evidence in support of it, and may be understood through science and the court inferred fault detection will be charged, and not generally in the decision to commit the only persuasive evidence will be a criterion. In criminal affairs the accused confession is not subjected to deduction and it is only possible through knowledge and recognition charges to the accused in court, so, if the accused are alleged confession, and the confession is clear and incontrovertible, and instead leaves no doubt to the court and ruler by other reasons votes against his sentence. So the suspended confession has not any value and even instrumentality cannot have too.

Given that Iranian constitution has granted the right to a lawyer to the parties (Article 35 of the Constitution) and under Iranian law including trade and civil procedure, in various materials to the representative subject including legal, judicial and contractual cases is mentioned and the most important thing being and civil law is referred to in Article 674 is the point that the client is liable for all obligations being representative of their agency will be committed.

On the other hand, the confession that there is the right news to others and to own detriment is one of evidence in substantiation of claims and understanding the parties to its work is important. One of these provisions is the substitution of confession. The origin of the debate is that lawyer or any other representative is a duty of protecting the rights and interests of the client or the principal. Their task is to defend the genuine person, while acknowledging this purpose is quite different with this assumption since commitments and representative actions are imposed on the principal. Now if a lawyer confesses with the authority of the client, confession works on the client are imposed that it is apparently dangerous. In Iranian law, in civil law, there is no explicit provision on the substitution of confession. In jurist, there is no prohibition in substitution of confession, although some scholars have tried to oppose it. They apply the principle on being delegation of everything unless there is an explicit prohibition. So, maybe the Civil Code and the need to express the same sentiment will not acknowledge being dependable. The legislator in 1940 in paragraph 9 of Article 62 and Article 368 of the Civil Procedure Law of the sentence is legal until in 2001 the sentence has confessed in order to prohibit the substitution. The legislator has discussed the importance of the confession. On the other hand, representative endowment is by the legislature and genuine person has not any role in the representative endowment. The effect of these measures is not representative but also for their genuine.

In this case, the principal must know the rules and know how much is a result of the contract or the legal representative of the authority. One of these authorities is whether there is a representative in doing actions admits to doing them or not.

According to the effect that the confession in his right and noble representative and the representative agreement will be effective on economic and trade relations, more attention has to pass legislation requiring states to influence the judgment or the lack of influence of such a confession to take action.

### **Statement of the problem**

Representation in confession in Iran is among the issues that in the Civil Procedure Code were adopted in 1940 explicitly accepted. In paragraph 9 of Article 62 of the former law was decreed: Substitution in the confession will be accepted provided that such authority is stipulated in a law.

Article 368 also stipulates the ritual law: Confession lawyer in a way that is decisive argument is valid if his power of attorney has been prescribed. Now, according to the jurists of these materials it can be concluded that the substitution theory implying possible substitution of confession are being accepted by the former legislator. But the Islamic Revolution legislator in order to canonize more rules has attempted to reform, one of the reform legislation is the Civil Procedure Code adopted in 2001. In this Act, confession serious problem of substitution is referred, so that in Clause 2, Article 35 of this law, confession has been detected impossible substitution as one of the evidence in substantiation of claims. While at the top article 35 of the Act, delegation in court comprises all known authority on the proceedings but what the client has exceptions or that the substitution would be unlawful.

Therefore, being possible substitution of confession is not faced any legal hindrance. Also in the completion of this Note, the legislator in Article 205 of the said Act is that the lawyer confession against his client to the affairs of the decisive fights is not accepted whether in court or out-of-court confession is made. Therefore, there are differences between the various confessions and these differences should be discussed in order to clarify the issues. Other issues that are the subject of research are the confession of forcible guardian on the right of the ward and the effect of their news will announcement in line with the tasks that their legislators have established.

### **Theoretical foundations of research**

Throughout the history of the ups and downs of the past, the best way has been to obtain confession from the criminal which human has chosen for achieving the truth and discovering the victim subject. The criminal in defiance of the orders of Allah and His messengers has considered himself worthy of punishment and has confessed before the legislator judge and confessed their sinful actions which in this case, there are rules against that in every religion and law, they treat him. In the tradition of Jesus Christ, anyone at any age and in his lifetime if he has committed a crime must be present in the church and before the priest confessed to his crime and running this command for every Christian is obligatory and binding and social and economic characteristics will not affect. As throughout the history of this cult, we see that more Kings and Sultans of European countries before religious saints had confessed and knew themselves worthy of punishment and retribution. In Islam, there is also a confession of sin in the eyes of the Lord, it is not required that a confessor acknowledges before the present spiritual, it is enough when he is before his God and in His presence to admit and it might possible that Allah does not punish him and accept his repentance.

#### ***The definition of confession***

The word confession means "something or something proved by its behavior" and "confession" (Moein, 1969, p. 976), "acknowledging the truth" (Firouzabadi, vol. 2: 11) and "proof" (Raghib Isfahani, p. 600). In terms of jurisprudence, confession is "to notify human to the right that is necessary to him and the religion prove to book that "bear witness and don't follow temptation" and the tradition from which the Prophet (pbuh) that: "confession of the wise to their soul is allowed" and the consensus of the scholars that the confession of the mature person is competent to occupy to his soul signed (Allameh Helli, 1994, p. 1043). What is in the definition refers to the news of the confession, being signed the confession upon the confessor. Imam Khomeini (RA) in Tahrir Alvasileh defines the confession as following: "Confession is going to be right against the news ..." (Mousavi Khomeini, in 1987: J2.s 49), in this definition "decisive" means that suspended confession is not regarded as confession and is ineffective.

The definition also states: "confession is the consistent right news to the detriment or denial of the right to own benefit and to the detriment of others". According to the definition of confession we can say that confession includes four essential elements as follows: 1. Confessor: a person who confesses. 2. Beneficiary of confession: a person who has confessed to his advantage. 3. Subject of confession: the subject which a confessor accepts it for beneficiary of confession and informs it from having rightful of beneficiary of confession. 4. Confession formula: word or other informs the writing by which a person has a right which another person has assigned him (Tabatabai Hakim, 1993; Hekmatnia, 1998).

#### ***The definition of representation and its divisions***

The word representative literally means "He who can and does emerge, to reflect" (Dehkhoda, 1999, p 227). In Islamic jurisprudence, the term does not represent in general and expresses using titles such as guardianship, powers of attorney and guardianship matters relating to the representation. But the "representation" in Iranian rights has been referred in some legal articles. Its saying is important because being this title is a reason for adopting representative theory.

In paragraph 5 of Article 84 of the Civil Procedure Code is given the right to the defendant that he protests while answering to the nature of the dispute if someone has disputed as representative proceedings such as powers of attorney, guardianship or trusteeship and is not confirmed his position. In Article 378 of the same law, in addition to the Attorney General, the legislator has predicted to "litigants, legal successors, representatives and their lawyers' appeal rights to vote.

After presenting the legal cases, it must be said that generally the lawmaker has defined in no law of representatives. But lawyers have represented definitions for representative. One of the legal authors writes in this regard: "In civil law, rules are not represented in the general contract, but the contract of mandate is all types of sentences that are representatives of government" (Katouzian, 2005, p. 54). They also believe that based on the materials 656 and 674 of the Civil Code of Iran, The contract can be represented as: "it is a legal relationship whereby the representative can participate to the name and the principal account in the contract which the effects of which directly affect the principal (Katouzian, 2005).

### **Forms of representation**

After defining the representation it must be said that this is an academic institution that has several different types. Therefore, jurists due to the nature of (Katouzian, 2005, p. 55), the base and the cause of (Safai, 2004, pp.82-81) representation, have divided it into a contractual, legal and judicial representation.

**Contractual representation:** Contractual representation is the one that the person delegates to others to perform legal acts in his name and his account.

**Legal representation:** The purpose of legal representation is the same legal representation in the narrow sense. This representation is in the cases which the representation of agencies has been determined in particular than the genuine representative in the law and therefore, the will of any of the two sides will not affect.

**Judicial representation:** The judicial representatives such as legal representation refer to the law. The difference of this kind of legal representation in the narrow sense is to choose a representative to the court and that's why it is called "legal representation" such as representatives of guardians for the incapable (Shams, 2004: p 235).

### **The difference of confession in civil matters with confession in criminal matters of Iran**

Despite the fact that in civil matters the confession has a kind of discovering the matter and consequently the reason of the legislator considers for sentencing the confessor, in criminal matters, the defendant confession does not have any relevance and he may be charged only through knowledge and understanding of the court in fault diagnosis. In other words, confession in Criminal Matters has instrumentality aspect and originally it is not considered to the detriment of the reason defendant and a legal argument; but in the decision to commit a crime, only persuasive evidence of ruling will be a credit criterion unless the law is explicitly stated (Imani, 2004: 72). And also unlike non-biodegradable of the confession in civil cases, confession is biodegradable in Criminal Matters because the judge puts under consideration in Criminal Matters in the implementation of respect to its esoteric doctrine principle, every part of the confession that could convince him to accept. Thus, the judge, can announce the criminality of the offender based on the confession of some parts of the accused confession and rebuff the documentation which the defendant has added to relieve his guilty plea (Goldouzian, 2006: p 339). Undoubtedly although the confession has some overlapping in criminal matters with the confession in civil affairs, they have some differences with each other.

### **Confession of the rights of others in civil law of Iran**

Confession is the right news for the other and to his own detriment that this is stipulated by the legislator in Article 1259 of the Civil Code. Through confession, the claim opponent is proved (Article 1259 of the Civil Code of Iran). Confession features are as follows:

*Confession is news:* That is the news that is available.

*Confession has a relation to the right:* "Right" recognized the authority of the law for anyone to be able to do it or leave it. Therefore, in the confession the new must be the right to be considered the confession; whether it is direct or indirect.

*Confession is in another benefit and at the loss of another:* If confession is in benefit of the person, the claim is admitted and if not to the detriment of his own, but another benefit is guaranteed, "witness" is considered. So the only news is called confession that it is in another benefit and to the detriment of the (confessor). A person who confesses to his own detriment and on the other right, it is called a confessor; the person who the confession is in his benefit, it is called beneficiary of confession and a right that is acknowledged to exist for other, is called subject of confession.

*Silence:* Silence is not shown confession; because it may be a denial or indifference tool and the discoverer cannot be the will of the person to the news of the right; unless definitive circumstances indicate it or that is confession sign in sight of tradition. As some jurists have confessed to child the silence of the husband that his wife has given birth at the time of parity, as a result, they accept denial of the husband if immediately after learning that the birth was announced. In fact, denying the father is acceptable when to the sentence of habit is sufficient for pleading; the fall of the husband is his implicit acknowledgment of parentage. According to Article 1262 of the Civil Code, a confession should be mature, sane, and free messenger. So the confession of minors and the insane and crazy and non-Herald is not an effective victim of duress.

*Being definite:* If the confession can be the proof of claim to the other side, it is "definite" and not suspended.

### **The purpose of research**

The case "confession" and its works are today's subject. Questions such as what the "confession" is and what people have to say that we should say "they have confessed"? And how and where they should say these words to be sentenced on their basis? And "confession" is always and in everywhere sufficient alone to condemn a person, who confessed, indicates the importance of their confession. Given the importance of the subject of legal scrutiny and attention to its lawyers and officials, the main objective of this study was to evaluate the effect of confession representation in civil lawsuits and also the contribution to the richness of literature study research is considered as the next target.

### **Methodology**

The present study is descriptive - analytical in terms of the nature and is a kind of survey in performance and in the method of data collection is based on the library method. In the beginning, studies organized have been conducted in order to prepare literature and theoretical foundations in the library method and then using the tools needed research (literature review and referring to books for civil rights of Iran) to collect data needed to be explored.

### **Research findings**

One of evidence in substantiation of claims to which has been stipulated in civil law and civil procedure law and placed at the top of evidence in substantiation of claims is "confession". Confession is of paramount importance in legal affairs. In all legal systems have been emphasized to confession in legal affairs. And in some legal systems it is called the king of the reason in evidence in substantiation of claims. In our legal system "confession" is taken into consideration in legal affairs as one of the main reasons so that the legislator sees no need to provide another reason for him in an assumption that the defendant confesses the claim. (Article 202 of Civil Procedure) And a judgment that is based on confession in court, but about the competence of the court or the judge

issuing the verdict is not appealed. (The note for Article 331 of Civil Procedure) but confession in criminal cases is not admitted to the degree of importance on legal affairs because in criminal cases, the probability that plea and contrary to fact and to support another person, is high. Therefore, the judge and magistrate in criminal affairs should not be satisfied with due to plead guilty but also by addressing the topic, acquire confession match with reality. So, the legislator in Article 194 provides: "When the accused confessed to the crime and his confession is explicit and no doubt and evidence also suggests that, the court shall proceed to judgment and in case of denial or silence of the accused despite acknowledging uncertainty or conflict with other evidence, the court began investigating witnesses and informants and investigated the accused and other evidence.

#### ***Confession in contractual representation***

In accordance with paragraph 9 of Article 62 and Article 368 and 369 .d.m law passed in 1318 Hijri (1940), in terms of representation and powers of attorney, conclusive confession which is in court by the lawyer, it is incisive and effective against his client provided that such authority is stipulated in the law. According to the article, confession to the premises and the claim by a lawyer did not need to stipulate in the law and was effective against his client. The legislator in 2001 in order to amend the former law a.d.m has abrogated the said articles as discussed in Note 2 of Article 35 of the Civil Procedure Law in the Public and Revolutionary Court decreed: "Swear, testimony, confession, sworn malediction and oath taken by the man to cease marital intercourse are not capable of being delegated." In article q.a.d.m is also provided in completing the note 2 of article 35: "the confession of the lawyer is not accepted against his client to the affairs which is conclusive confession, whether in court or out-of-court confession is made."

#### ***Confession of forcible guardian and protector***

Forcible guardian and the protector are the delegates that by allowing legislators are the representative of the incapable. The law has allowed them to possess on the property and financial rights of the incapable.

#### **Authority level of forcible guardian and the protector**

The legislator has considered incapable those who are a little older or impaired mental faculties are not able to manage their property (Article 1207 of the Civil Code) and the measures adopted to support them. On the one hand, the measures are related to transactions and legal acts of the incapable and on the other hand, they are related to legal institutions such as guardianship and trusteeship for which they are intended. According to Article 1207 of the Civil Code, the incapable have three categories: Minor, insane and non- adolescent. According to this article, it must be said that everyone who has these features has been incapable and according to the law, in terms of possession in his properties and performing legal acts is prohibited. In Article 1217 of the Civil Code, managing the properties of the minors and insane and non-adolescent is in charge of their parent or guardian.

#### ***Confession impact of forcible guardian and protector in the right of the ward***

With regard to the issue of representation in the supposition, managing properties (including possession of non-transporter and transporter) is the ward, checking and confessing to carrying out appropriations appears necessary because this case is not mentioned in the law. In Clause 2 of Article 35 and Article 205 Q.d.m, the confession, it is regarded as integral substitution. But about the above assumption that confession is not expressed on behalf the representative but also act on behalf of that representative admitted to doing it, the law is silent. The authenticity reasons of confession of forcible guardian and the protector are the rule of he who owns a property, concomitant reason, present apparent, the rule of anyone who hears his words he should swear and the rule of distress and constriction denial, respectively.

## **Representative confession for legal persons**

### **A. legal representative for legal persons of public law**

The subject of general rights is the relations between government and public departments. "Administratively Public Affairs is in two parts. National and local affairs are the ones which all people benefit from interest and its benefits and local affairs or a specific area are like location, or town or city. In terms of management, if the government of the people entrusted to them, the management style is the so-called decentralization, but if the public affairs including both national and local are managed as if for their managing in the capital, the ministries and public institutions were formed and the ministries and public institutions in cities and departments have branches that agents from the centers for the administration are appointed and deployed for managing there, these people manage the mentioned affairs according to the command and under the supervision of the central authorities called that the system of administrative centralization." (Motmani Tabatabaei, 1995: p 19-20).

### **B. Contractual representative in the legal person of the public law**

According to what is stated in the previous section, the legal person representative of the public law is conceivable two modes that one of them is a kind of legal representation and the second is a contractual type. In this case the legislator allows some public legal entities to introduce individuals as legal representative in addition to possible benefit from the lawyers. In the law a.d.m this verdict has been approved .d.m in Article 32 that recognition of the qualifications mentioned in Article assumed the chief executive or his deputy has been organized, and in fact, the legislator has granted the right of appointing a third party to legal representative.

### ***Confession influence on their representative for legal persons***

According to the above issues, it can be concluded that Commercial Director of the company, lawyers and legal representative who are introduced by the chief executive or his deputy on behalf of the ministries, institutions, public administration, public companies, in court or defense to the action or subsequently, the legal person lawyer is considered and only within the limits of what is delegated to them in the contract awarding behalf, are qualified. In 2001, in order to amend a previous law, public and revolutionary courts in civil procedure law in Clause 2 of Article 35 did not consider confession capable of being delegated and then in Article 205 of the Code of law is: "The lawyer confession is not acceptable to the decisive action against the client, whether in court or out of court." As in the second quarter is described, conclusive confession in a survey is against confession to preliminary fights that the confession is the supervisor into the premises of fights and tools tested before confession to the premises fights, the confession is the supervisor into the premises of litigation and claims referred. But it will not end to the fights and is not accompanied by acceptance of the rights claimed. As it is discussed, legal entities, whether private or public law rights, has the capacity to appear in court for the action, prosecution or defense of lawsuits that are brought against them. But since they are not just like real individuals, therefore, real individuals attend the courts on behalf of them.

## **Conclusion**

According to studies conducted in the discussion of the confession of the representative of the civil proceedings it can be concluded that:

1. In the rights of Iran in 2001 with the approval of the Code of Civil Procedure, conclusive confession of the lawyer against the client is not effective and pervasive whether it comes to the practice of confession in court or out of court. (Clause 2 of Article 35 and Article 205 of the Civil Procedure Code)

2. According to the materials 205 and Clause 2 of Article 35 of the Civil Procedure Code, conclusive confession cannot be admitted by law and does not constitute an attorney.
3. Iranian Civil Code of the issue of substitution in confession explicit provision that is useful the validity and effectiveness of this confession, is not sanctioned and are silent on this assumption. However, the oath as one of the evidence in substantiation of claims will be explicitly described impossible representation. (Article 1330 of the Civil Code)
4. Interpretable issue of confession in law has been great reputation. Jurists consider everything capable of being delegated unless it is stipulated that there indicating stewardship in action, alleging that it must prove it. So, the famous jurists say that confession is not bound to superintend and the original intent of the legislator is not bound by it. Therefore, the silence of civil law concerning the substitution of confession and the ruler of the former Procedure Code until 2001 also implies behalf of the confession. (Paragraph 9 of Article 62 and Article 368 of the former Civil Procedure Code)
5. According to stipulating the legislator in Iranian law, conclusive confession is capable of being delegated. In law there is not the article being useful for conclusive confession.
6. According to the legal and judicial opinions of authors, it can be said that conclusive confession, confessing to the principle of litigation, meaning, is what a relief requested in the petition column is dedicated to the Court. Therefore, with conclusive confession by the client, the court accepts it if it complies with the law, reason and habit.
7. Conclusive confession is against confession to the lawsuit premises. Admission to the premises of the lawsuit and tools cited that the case will not end to the claim, and accompanying by the acceptance of the claim and the claim is not right, it is non-decisive. Therefore, the lawyer confession to the premises of the lawsuit against his client will be accepted.
8. In Iranian law, there is no article to the nature of the confession of the client to the lawyer. The law states that if the power of attorney or its belonging (confession) is suspended, undoubtedly, such a confession is considered the confession of the client. Because the suspended confession is ineffective (Article 1262 of Civil Code). But if the contract of mandate and its accessories (confession) is incontrovertible, and subject of confession is mentioned and how to delegate is for messaging, the obtained confession of the client before the lawyer is considered the confession of the client, and the other party can prove it with valid evidence such as witnesses or as stipulated in a written legal contract etc. and, if proven, it is valid against the client.
10. In general, in Iran's rights to the confession that representative including contractual, legal, and judicial, according to the task that had to do on behalf topic, provides, there is no article, and as a rule that the confession consensus to accept (Overview) and there is another prestigious rules.
11. The confession of forcible guardian (father and grandfather), protector, attorney general any representation that explicitly of his client or the law is authorized financial involvement and acquisition of rights of another person, and their confession is on behalf of doing the issue, with the silence of the law and referring to the views of jurists, the sentence is given to the reception and influence of such people.
12. The confession of forcible guardian (father and paternal grandfather) is effective in the right of the incapable whether confession is during the guardianship or after the decline of the position. But the confession of other representatives except fathers and grandfathers only during the period of representation and the authority is valid. In an era when their position faded away, according to the confession the news of the representatives cannot be accepted.



### Suggestions

According to the proposals mentioned in this work are as follows:

- In the Civil Procedure Code the article is added in defining conclusive confession: "it is conclusive confession that to the principle of the claim is performed mentioned in the petition column."
- In civil law to accepting the confession of forcible guardianship in the right of the ward due to its silence on the controversy over laws and jurisprudence, add the article in this form: "Confession of forcible guardian (father, paternal ecstasy) in the right of the ward is absolutely incisive and effective whether during forcible guardianship or after the demise of the position."
- Also, to the confession of other representatives in the civil law in the course of a representation and to them a vacuum in relation to the acceptance of the confession is considered.
- The amended Clause 2 of Article 35 and Article 205 of the Civil Procedure Code is also proposed:
  - The confession of the lawyer against the stipulation in the power of attorney against the client is valid and effective, provided that the confession is made in court.
  - We should not discriminate between confessions in criminal matters and civil matters, by representatives of persons but we assign to the governor the effects of each of them.

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