Formation Necessity of Exclusive — Commercial Court with the Approach To Rights In Iran

Ghazaleh Kabirabadi

Department of Law, Meymeh Branch, Islamic Azad University, Meymeh, Iran.

Abstract

Affairs specialization is one of the necessities of a modern legal system. Complexity of affairs led to that while not follow a specific topic, it is not the desired result. The courts are the most important institutions that are associated with people's lives, thus, specialization are one of the most fundamental concerns of the court's judicial system. However, the field of commercial law, both domestic and international issues, including issues that should be studied problems due to its specialized form. Business requirement, speed and ease of doing business in trading require shade Social Security. State significant development and commercial activities in recent years and the indispensable role of the specialist investigations and commercial litigation, facilitate investment and improve economic indicators modern societies, it has pushed Iran lawmakers to develop regulations for the establishment of commercial courts to formalize such an entity. Given the above and more complex business, judges that are aware of the trade character and they have a spirit of initiative and Commerce, they should settle disputes between merchants because business affairs is the appropriate extent that it does not comment on civil matters and public judges are lack of insight and knowledge to solve correctly, quickly, accurately and fairly claims of the merchants. In this regard, this study will examine the need for special courts and procedures of the business.

Introduction

Formation needs of the Commercial Courts:

Today, the international community acts more harmonious than before. Business is more advanced than in previous periods. Upward foreign investment has gone and interdependent world economy [1]. Merchants have the internal of the borders and ordinary people who travel frequently to countries looking to order something like this [2]. This work has led to both positive and negative; Positive increases communication between businesses and individuals and negative that is because it may be legal issues and lawsuits followed. These lawsuits and legal issues with regard to discrepancies in the trial leading to increased costs and makes it difficult to dispute settlement process [3]. In the face of these negative results, we can reduce the costs and problems of incompatibility with trading rights with civil rights regulations provide special rules so that they do not feel the difference with your subject in a foreign court [4]. Legal systems of the world can be divided into two categories. First, unity and justice system are generally accepted to have avoided it including the establishment of special courts and the second that the system did not prevent the formation of some specific references to unity despite the admission procedure. The first category can be seen in the Common Law legal systems, particularly America and Britain and the second category can be found in the legal system of the Roman-Germanic, such as France. The principle of unity of civil and criminal proceedings in France has not prevented the creation of specialized courts with the formalities and procedures specific and they have to deal with specific issues such as trade capture, real estate, jobs, and social services, compensation of victims of certain crimes, children and adolescents, maritime commerce and so on. In Le Common Law system, the point is that it must not be forgotten courts of general jurisdiction that has not prevented the admission form in some cases, specialized courts with broad jurisdiction and special jurisdiction [5].
MATERIALS AND METHODS

Review dissenting views and Court Procedure Commercial:

Some legal experts believe that there is no photo on what the bill is the introduction of commercial procedures, such procedures are not in France or in any another country. Also consider that the bill is a coalition of prominent figures incongruous trials and market it as a disruptive innovation in Hearing and justice and note that the drafters of this bill will not work without a good reason. Hence, they have evidence to justify the introduction of a draft of the compilation procedure. However, this reason is not a positive reputation for independence and the need to impose such a procedure, apart from the Code of Civil Procedure. Including the due process rights of international trade, which is largely determined globally compromise in terms of the procedures governing the handling of trade disputes, no features could be said of certain business affairs in civil proceedings for non-commercial distinction, it is not observed. In this series, according to its international nature, it is the only specific aspects of civil procedure, civil affairs, there is no such entry or disease third draw. Hundreds of lawsuits were settled between the governments of Iran and America, and citizens of all kinds, according to the same rules, with a few minor changes that had been the case from the jurisdiction of the Arbitration Court. The necessity of developing such a procedure is mentioned in the preamble of the draft "comprehensive and coherent development and regulatory approval". But this feature is essential for regulation in all areas, not just in the business. "Expeditа", "Increased accuracy in the investigation" is needed not only in commercial litigation, but in all cases [6]. According to my research, this study has excluded the opinion of legal scholars, because these people probably did not attempt to comprehensively investigate and find the truth and stop and have just announced its decision to unilaterally and without sufficient knowledge. In order to disprove this theory should be such a procedure is based on the country of France and the country's judicial courts comprise trade and commercial litigation proceedings that the rules and regulations of the «1-721L to 3-762L» Commercial Code was developed in this country, but it's not like the laws of our country Segregation laws such as the Civil Code and the Civil Procedure Code. Although no distinction between formal and substantive rules, but in fact, it did not make any difference and not only in France but in England there is a trade only a subset of Procedure Commercial Law is located in a separate chapter, because if there is no such trade procedures and rules, French commercial courts was left standing and it was not until a hundred years of history has such a successful judicial body to resolve lawsuits brand. Further stated that the bill should not have been incongruous coalition faces and Markets Tribunal, but it is not a disruptive innovation at the hearing and adjudication, because perhaps there specialized courts are run by people knowledgeable in the utility business in case of any dispute will be resolved easily without spending much time and lawsuits. Proceedings governed by expert judges and advisors, it is undeniably a helpful step in securing justice and fairness and reliability so that it can not be considered a violation of the procedure. Expressed the need for developing such procedures as "the formulation and adoption of a comprehensive and consistent regulation", "Expedited processing", "increase the accuracy of the proceedings" and "special deal" are all positive reputation for independence and the need to enact a separate procedure of Civil Procedure as has been discussed in detail in the discussion of the unity and diversity of their distinct nature of private law and civil and commercial matters. This point should be considered when discussing and resolving trade disputes that require a specialist. It should not be left to judge the dispute resolution specialist. Since not judge specializing in public courts to resolve commercial disputes, must inevitably refer to an expert in business and hence to parties other than the cost of litigation costs in removing, also leads to the proceedings prorogation.

Finally, it should be stated that the regulation of international commercial arbitration has its own rules and does not have comprehensive legislation on domestic trade issues and hence, it can not meet the needs of local businesses. Commercial Procedure Editor philosophy is not limited to domestic commercial disputes resolved it also enacted laws and regulations and to settle international disputes can be referred to as such claims arising from foreign investments. If there seem wasteful business courts in countries such as France, despite the regulation of international commercial arbitration, the courts have not been successful in resolving commercial disputes more than a century and were to be dissolved at the beginning. Some legal scholars argue that unlike commercial court is the judicial policy. They argue: this overlap is incompatible with the approach of the courts and judicial politics. Establish procedures for the courts to reduce the judiciary's approach, as it is incompatible with the establishment of the Tribunal. Judicial policy tends to dispute resolution councils and before the Court that the problem will not be solved with the establishment of such courts. The answer is given in the second argument, stating the necessity of creating courts.

Needs of the commercial court:

Due to the dramatic development of commercial activities in recent years, regulate the relationship between business growth and economic development and thanks to the undeniable role of specialized handling commercial litigation matters and business development, facilitate investment and improve economic indicators modern societies, regarding the obsolescence of the old law courts had based their business establishment;
considering the necessity of reviving the commercial courts and formalize such an institution to expedite the accuracy, expertise and facilitation of trade claims, proceedings, in implementing paragraph “2” of “158” constitution and in line with the growth and prosperity of the business community and others, it's not so easy to handle complex commercial litigation perspectives irrespective of the nature of business and civic affairs separate from each other with the same procedure so that is the basis for lawsuits, including civil and commercial litigation [7], shall provide for judicial security and trade law judges have interpreted the same way that civil law is interpreted. The fact that there is not business in Iran, except for a short period of time trial in Tehran public and the courts have dealt with disputes and commercial litigation, another interpretation of the Commerce Act, it is relevant to the style of the civil law courts; while our business lies in the spirit of the French Commercial Code borne on the French trade law and trade [8]. The most important requirement for a commercial court has expressed the matter as follows: “1” Commercial Procedure Act: "The court is formed to address specific business and increase accuracy and expedite the processing of claims arising from the business and opinions concerning its implementation and strengthen the role of jurisprudence in addressing these claims”.

RESULTS AND DISCUSSION

Specialization in handling:

With the development of this bill, it is clear that the principle of specialization in commercial litigation and judicial agenda. This comparison indicates that such an approach at improving judicial expertise in the judiciary with the efforts of the judiciary through court proceedings in the 70 for the general public [9]. Non-commercial and commercial litigation matters in accordance with the requirements of laws governing its alien culture will certainly have a negative impact on macroeconomic activity - Commerce Country and it will lead to insecurity in business investment. Competent judicial authorities indicate general commercial litigation crisis [10]. Given that there are many differences and preferences among merchants globally be acknowledged in almost all developed countries have to face the courts in this regard, so it helps to have professional and quick and easy to handle claims. Here, the Netherlands and France, so the courts are more appropriate than the sick with his Iranian side, our merchants are occasionally referred to the Special Court for the trial of the two countries due to lack of business in the country. Also, since the trades have been associated with many businesses around the world are constantly working to improve, makes clear the need for a special court to deal with cases as it relates to business specialize in both domestic and foreign. Here is the judicial system of Iran to its international traders visit the courts of other countries, including the Netherlands and France for their business cases. Therefore, the first and most important reason is the need for specialized courts to handle business. Also, the Commercial Procedure Act, to achieve professional judgment proceedings in the courts, they are subject to two conditions. At least five years of specialty training pass judgment on the legal and judicial courts. It should be noted that the judge must be accompanied by at least one consultant not only in business but also in the Court of Appeal hearing or appeal to the Commercial Court. This consultant is a good reputation among the people familiar with the laws and business customs and habits. This is indicative of a business specializing in providing professional Objectives in Commercial Court proceedings so the consultants are not applied to a mere knowledge of the customs and habits of business experience in the Commercial Court they do not have the specialized training in the field of commercial law. It is necessary to be familiar with current issues in commercial law for Judges that can handle commercial disputes and the necessary means to establish a Special Tribunal of Commerce and this provides the background to handle commercial litigation, as it is the best interest litigants [11]. Business should be addressed to the trial judge with experience in different fields of business he is fully aware of the legal firm of business, conventions and treaties, international trade law. Judge of the world and benefit from strong legal knowledge can be a guarantee of a fair trial free of any errors due to lack of expertise and experience. A special deal that will guarantee a fair trial, it is business confidence in the judicial system to resolve disputes. This is a clear example of e-commerce is the buying and selling of contracts so that unique nature of the Internet and the conclusion of contracts has had a significant impact in cyberspace, many traditional concepts and principles. Online business transactions are associated with some uncertainty due to the lack of face to face communication between the consumer and the merchant in the virtual environment of the Internet and thus give rise to disputes. On the other hand, the rules governing commercial disputes have been prepared primarily for traditional contracts so that they are not easy to implement in electronic contracts. For example, it is easily possible to determine the competent court according to the place of performance of the obligation of contracts shall be concluded by the traditional parties together in one place but it is not possible in the virtual space of the Internet. Another example of questionable evidence, it demonstrates the nature of virtual and non-electronic exchanges so it is the perfect introduction to the mechanisms and evidence for claims arising from contracts ecommerce general and judges, not only in the field of commercial litigation arising from electronic commerce contracts also evidence that information and knowledge are not and they have to refer the matter to the expert, this leads to the prorogation of the hearing. Hence, the use of expert judges and knowledgeable in such matters there are also special courts to deal with commercial disputes, especially disputes arising out of contracts for e-commerce.
Accuracy at handling:

Handling to trade disputes is required accuracy is profoundly deep. General Court for various reasons like high volume of cases referred to the courts, handled by non specialist judges, not devote sufficient time in handling legal claims not supplied Commercial exact justice. The purpose of the establishment is specialized courts for the exact check commercial disputes by judges that have surrounded and insight necessary to make business. Although a detailed investigation of the factors that goes back to the same profession, because judges specializing in commercial affairs because all respects to the commercial have information and awareness; that knowledge makes the slightest ambiguity is left unresolved regarding the controversial issue. It is exactly the opposite of the general court. The general court due to crowding too in many cases is addressed superficially and careless. With a dedicated commercial court rises accuracy factor in the investigation of claims, because the courts purely commercial disputes will be dealt and among other lawsuits sometimes the lack of significance and commercial litigation matters must turn to deal with it so this file will not exist consequently, ample opportunity is provided to handle these cases carefully. Meanwhile carelessness in handling commercial disputes in courts of general causes rightful person to be affected and this field provide merchants mistrust and cynicism than judicial system. In French country expert judges will carefully handle your claims to right do not spoil the traders. This causes the not only dealer in France but traders in other countries such as the lack of such courts are to resolve their commercial disputes to trust such specialized courts. Thus, the lack of precision in commercial litigation damage to reputation of the dealer called into questions both the health and efficiency of the judiciary.

The speed in the proceedings:

In business, a good reputation and credit transaction is without doubt a very important factor [12], thus, judgment is required to establish commercial courts to handle business quickly. Business requirement, speed and ease in doing business transactions are in the shadow of social security. Therefore, due to high volume of daily trading and subtleties of the profession, there is no doubt that the justice system in this country needs a special court. It can not currently be addressed in a public court due to the high volume of commercial crime cases quickly and accurately, because in the court of public hearing process is very long and sometimes leads to the loss of credibility due to lack of confidentiality issues and parties and they will lose. In today's business world, speed comes first letter, because there is a possibility of irreparable harm in turning a profit with very little delay. The same is true in the settlement of commercial disputes and as previously mentioned; the current speed merchants are interested in commercial litigation. Businesses to avoid controversy as much as possible because the most important thing for traders is to trade on credit if the businessman fights to be due to a trade dispute that he is not in charge of it, but go slow processing, it makes her credibility is questionable and if the trader can lose credibility could barely get back to the old account. By the same token, when a commercial dispute arises on the one hand, to address the differences in business court judges professional and thorough in hearing on the other hand, the decrease in rate guarantee due process hearing in this Court resolving a commercial dispute and the result will be to maintain the credibility of the merchant and the merchant will incur less expense than litigation in the courts of public and non-specialists. The General Court, the claims referred to without a breakdown according to whether they are commercial or civil commercial disputes handled due to the incorporation of the claims are dealt with in turn and long may differ traders should wait for a solution. Meanwhile, a hearing by the non-specialist and unfamiliar laws, conventions and treaties, conventions and business habits are more difficult to handle in a public court. Therefore, the volume of cases referred to the above-mentioned branches of the General Court of the state and that we should be a formality for litigation it leads to the prorogation handle commercial disputes. The General Court, the judges are not qualified to handle claims quickly. Therefore, must be reported as this also leads to a different specialist for stopping the trial after a long process. So it will fix all these problems with your specific trial.

Complexity of the business:

In today's world, it is impossible to live without trade, but the trade is not simply limited to those sales. By advances in technology, business and trade relations was also made progress in the development and complexity. Merchants trade deal with new media and computers in their offices all around the world. There is now a global business. This is an important factor in business complexity. Globalization leads to complex commercial litigation matters and commercial activities due to significant development in recent years. Hence, it increases drastically with the globalization of communication and the exchange of economic, political, social, cultural, beyond borders. There are important factors in the complex world of commerce, including: Reduction of trade barriers between countries, rapidly increasing economic dependence on one another and merge them together in unprecedented growth of multinational companies, development of international networks of production and distribution of goods and services, develop new technologies, especially in the computing, communications and the Internet, changes in the nature and form of labor and the emergence of new actors on the international business scene. The complexity of typical commercial contract, it is in the field of foreign
investment. This complexity is also evident in international payments via letter of credit known as the LC. Four contracts will result in pay through LC;

1. The basic contract, the contract beneficiary, usually it is the applicant's credibility and sales contracts.
2. Banking contract, the contract between the issuing bank and the buyer's credit.
3. Administrative contract, the contract between the issuing bank and the advising bank credit.
4. The bank guarantee, the contract between the Bank and the beneficiary's account.

The complexity for a payment documents whereby the LC issuing bank, advising bank statement shows the LC, liable to pay under the bill or promissory note or draft documents. In these cases, the judges of common courts will likely find enough information about these documents in case of dispute, they will be unable to resolve the dispute in this regard. However, judges specializing in business are familiar with all the contracts and business documents and they are able to resolve such disputes. Given this complexity and the growth of industry and trade, both domestic and foreign, European countries, specific departments and special commercial court is intended to address trade disputes. Hence, given the complexities of globalization and the development of increasingly things like trading companies, foreign business documents and etc, It is felt that the courts and the lack of specific procedures in resolving commercial disputes. Finally, we conclude that at present, although it is felt need in the commercial courts but this is not a general trial courts set up along with a dedicated court ceremonial and the general procedure followed in the Courts. Because, in this case the commercial court of law and regulations of a public hearing follows that it is contrary to the basic principles of trade [11]. In the past century, scholars have tried to separate the principles of commercial law, commercial law, civil rights and business operations are based on independent reviews, but the changes that occur in economy and trade, it involves a series of new business operations that require interpretation and justification. Commercial law, such as civil rights and stability can not be shaken by it have been built centuries ago and it is evolving and changing every day. There is no doubt that the crisis in commercial law and civil rights in the absolute. But the nature of the business has specialized in color due to increasing complexity of business transactions between merchants and citizens of certain rules, it can not be handled claims arising out of them quickly and accurately and professionally traditional and non-specialist judges in the courts by the public.

Conclusions:

Business in today's world, has assumed an important role ensuring the economic and commercial needs of all countries. Particular country and traders are the main actors in this scene; because they are with extensive business dealings diligence are domestic and international levels towards meeting these needs. However, it beginning need for specialized courts Iran felt to address matters and commercial litigation well and resellers, system builders also was approved the rules some difficulties that there are implementation of these rules court and business processes, prompted lawmakers to abolish pursuant to paragraph "9" of "76" accelerated Procedure Act 1309 SSI, previous rules the Commercial Court deployment was formed based on them. The main objection raised was that about the process of the court proceedings, delaying and it would be incompatible with was article speed adjudications and commercial litigation. Also such delay mainly derived from lack of involvement of members of the court at during court proceedings and also issuance ratings.

Due to angles of complex commercial litigation and according to the dramatic expansion and business activities in recent years and the regulation of relations between merchants growth and economic development and thanks to undeniable role of specialized investigations matters and commercial litigation, the Business development facilitate investment and improve economic indicators modern societies according to the obsolescence of previous legislation the establishment was commercial Court on the basis and the necessity of reviving the commercial courts and formalize such an institution in order to speed, accuracy and facilitate expertise to handle commercial disputes and the implementation of paragraph "2" of "158" constitution and in line with the business community and generate growth and prosperity of the country, it's not so simple anymore regardless of discrete nature of the business and civic affairs of another the same procedure that Darcy based lawsuits including in civil and commercial be addressed because will not provide judicial security.

But should there be a tribunal competent and familiar with all business matters and procedures that provide legal security for the merchant. When expressed expedite the hearing and final decision on trade issues as one of the requirements of the trial, it should be enjoyed by all the references to commercial litigation to remove this feature and other appropriate authorities. In that regard, today should be revised in the public courts to handle disputes arising from commercial, for this reason it is felt that the lack of courts and procedures, particularly with regard to the development of growing things like business transactions, corporate, foreign business documents etc public authorities have the legal authority to show that the crisis in commercial litigation, given that there were disagreements and a wide range of tastes among merchants, be acknowledged in almost all the developed countries in this regard the courts have specifically it helps so quick and easy to handle specialized cases. Due to the high volume of business that is done and the subtleties of the profession on a daily basis, there is no doubt that the judicial system needs a special tribunal; because now he can not handle the crime in the court of public business due to the high volume of cases both the rapid, accurate, because in the court of public
hearing process is too long and even the loss of reputation and damage to them due to the open nature of matter and the parties. In addition, not only does not lead to an increase in handling commercial disputes go to court but it leads to accelerating the process of going to court proceedings and reducing public so judges do not specialize in resolving disputes and it is most important that the legislator has used innovative and the use of expert judges selected as the referee judged to be the expert on the issue. In this regard, the bill Commercial Procedure Code has been developed to address issues such as claims arising from business practices, international business companies, foreign investment and international trade agreements, the jurisdiction of the Commercial Court. The most positive regulation bill than expected in the general court; use it to inform the judges and advisers familiar with trade issues and habit and custom business rules commercial courts so that judges must judge only two conditions at least five years of specialized training courses in law courts and the judiciary and legal aspects of commercial litigation consultant to strengthen the role of jurisprudence in addressing one of the main sources; this means that, in common law determines the rules so that trade issues that can not be overlooked. Because of the laws has not been formally today, scattered practices that have as arisen with the passage of time and advancement of the legal trade it have ratified the Convention or to the regulations in force and the Court is not considered to predict without legal counsel although considered a consultant rather than merely an advisory opinion it is admirable.

It should be considered that the selection of consultants and reputable traders active in the Chamber of Commerce as its most important commercial entity placing the economy in line with best practices alongside other major sources of commercial law. Even for these counselors also has legislative responsibility for the crime businesses are fighting to deal with the vacuum and ensure that consultants can not make infringement and conspiracy. In the bill, to prevent prorogation prosecution except as the right to defend the principles of due process and other formalities, it is to prevent the courts to expedite the cases. Legislator of the best innovations that has been bold in its bill, it creates its own rules of procedure of the business over time. According to the present theory predicts that the Guardian Council briefly in one or two the only time it does not Shariat Criminal Procedure Code and the Commercial Code also explicitly part of business documents, under the bill, the legislature has addressed this issue in "13" material. Other actions legislators on this bill done correctly, it determines the time period for objecting party; because if the term is indefinite protest parties such as civil procedure, whenever it is possible and it can lead to flawed judicial security trader to destroy his credibility. The use of electronic systems for litigation instead of going directly to the offices of the court system, mechanized systems with records offices, banks and other institutions to place information on the property and funds of confidential business inquiry needed to Court and also for the execution will stop execution when the condemned, it is a useful step towards reducing e-waste in the judiciary and its inquiry office and it entails a saving of national resources. Since observe that legislators totally rule expedite dispute resolution judiciary Policy and Research is based on reducing the trial court in the ordinary and exchange bills hosted by using both methods and the determination of 3 -day trial judgment if the court is not capable of meeting the verdict. In my opinion, contrary to other law professors who believe that the verdict must Civil Procedure complain, I disagree because in these cases, we are looking to deal in less time and should be avoided at the other end of the ritual, which leads to the slow pace and it is enough for 10 -day deadline for objections to the vote, because otherwise, what is the difference between the court and the court of public business. Although it is considered within a month's salary for a protest vote in France.

REFERENCES