

Original Article: The Condition of Non-Resigning from Attorney Power during the Necessary Contract

Zahra Rahimi^a, Reza Rashidi^b

^aMaster of Private Law, Faculty Electronic Education in Qom University, Qom, Iran

^bMA. Student of Private Law, Faculty of Electronic Education in Mofid Qom University, Qom, Iran



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ABSTRACT

In this study, all articles published up to the winter 2020 in Persian on the non-resignation condition were reviewed during the required contract. These articles were searched through databases, Medical Law Quarterly, Iranian Journal of Surgery, sid.ir, Legal Quarterly and Civilica Publications, Private Law Research Quarterly, using keywords such as immovable attorney power, attorney power, lawyer dismissal, deprivation right and the advocacy effects were obtained. Also, the condition of non-dismissing a lawyer can be criticized in terms of opposition to the book and tradition in such a way that the application of special attorney arguments regarding client's referral includes the conditional and unconditional case, and in case of doubt, the principle is to obtain the client's referral permission from the attorney. The attorney power is also a special meaning that the parties cannot agree with otherwise by condition, hence, the condition of non-dismissal is against the ones which are mentioned in book and tradition. The attorney power contract is based on granting representation and for this reason, it is regarded as one of the authorization contracts. They do not have it or in some ways, it is not possible to perform it by the people themselves. The diverse opinions have been expressed among jurists regarding the lawyer dismissal. The jurists believe that the parties cannot agree to make the essential contract permissible, which is necessary.

Introduction

In recent decades, many changes have taken place in the form of immovable power of attorney and using the attorney power. It seems that the main reason why people turn to such attorney power is to establish a strong legal relationship and eliminate the hesitation caused by the legality of the attorney power contract. In addition, in some cases, the parties' interests require that the wavering and contract

limitation to be reduced. However, although resorting to these methods with proper use and following the civil law sometimes makes things easier for people, unfortunately in many cases, it has been abused by profiteers and opportunists to justify their actions based on their own benefit. This group sometimes considers their action as mere attorney power and sometimes as power attorney in the position of sale and transfer, and sometimes a combination of the two to defend themselves. Among them are people who basically do not have

*Corresponding Author: Zahra Rahimi, (rahimizahralawyer97@gmail.com)

a correct understanding and inference from the document content and the terms meanings which are used in regulated attorney power, and hence these individuals are exposed to unexpected and not anticipated loss. Therefore, the effects of such attorney power are different based on various methods of its creation; consequently, it is significant to recognize their nature. Because, for instance, if we consider the given legal act as a sale, the death, insanity and stupidity of each party will not affect the contract dissolution; consequently, the client loses the right to practice law, although this issue is not specified. However, if, on the contrary, we consider irrevocable power of attorney as a mere attorney ordinary power, then all the effects and rulings of attorney power will be applied; consequently, the attorney power will be dissolved due to the death and insanity of each party. He can also do the subject of advocacy himself or even attach a lawyer, trustee or supervisor and by this action he can limit the powers of a lawyer. The existence of these different effects on such attorneys is the source of numerous lawsuits and disputes in this regard and has accounted for a significant part of the cases of justice courts. In addition, many jurists still do not agree on the possibility or impossibility of depriving a lawyer of the right to dismiss a lawyer, as well as the attorney power without dismissal. In the above-mentioned viewpoint, as well as the increasing spread of such attorney power among the people, familiarity with the law texts and the effects of this type of attorney power, as well as familiarity with the problems and dangers it can create for the parties seems more vital than ever.

Condition

"Condition" based on semantic refers to make an object or thing necessary in a sale or in any contract is to oblige or be bound to something at the time of the transaction. It also means obliging and suspending something to something else. Some scholars of law have added the condition to the conditions [1].

In legal terminology the condition is defined as:

Civil rights

1) It is a matter that is likely to occur in the future when the parties to the contract or the person concluding the occurrence of the legal effect of the

contract or agreement perfectly or partially stop the occurrence of that probable matter.

2) A description that one of the parties to the contract has pledged to exist in the transaction without that description being likely to occur in the future.

Jurisprudence

In jurisprudence, "condition" means absolute obligation (either during the contract or independently and separately from the contract). Therefore, the condition is divided into two types: The condition during the contract and the initial condition.

Principles of jurisprudence

In the term of the jurisprudence principles, a condition is anything whose existence is necessary for the realization of another thing. However, if a condition arises, it is not enough to create a condition alone.

Jurisprudence scholars have considered the word "condition" to have different meanings from different angles. As some have considered in the civil concept of the probable event to happen in the future, the parties to the contract or the contractor will suspend the occurrence of the legal effect or contract upon the occurrence of that probable event. It is also considered to be an attribute that one of the parties to the contract has pledged to exist in the transaction without that probable description being related to the future, which means the condition of the adjective. Also, in the jurisprudential sense, condition is considered as the absolute meaning of obligation, whether during the contract or independently and separately from the contract, and from the viewpoint of the jurisprudence principles, condition is something that will not be conditional if it is not. Conditional creation is not enough [2].

What is certain is that the word condition has different meanings; however, it expresses one of the following two meanings.

1. It is a matter on which the event occurrence or action or a specific legal event depends. For instance, according to Article 190 of the Civil Code, the existence of intent and consent, legitimacy, subject and legitimate direction are the conditions for the transaction validity with a contract.

2. A condition is an agreement which, based on its special nature, its subject has been included in the functions of another contract with the parties' consent. The condition in this sense is of two types.

2.1. A condition which by its nature is not an independent obligation and should inevitably be one of the functions of another contract, such as the adjective condition, which is related to the characteristics of the original transaction.

2.2. The other group is conditions that can be agreed as an independent contract. However, due to some considerations, the two parties have made it a subject of the contract and named it a condition. Like the attorney power that is stipulated during the marriage contract, in this case, what is being compromised is a contract consisting of two contracts, with the condition that one of them has two main aspects and the other has a secondary aspect. The latter is a condition, that is, an obligation that has been attached to the main obligations of another contract, the limits and conditions of which have completed or adjusted those obligations.

Non-Dismissal Attorney Power and Motives

In this section, after expressing the concept of irrevocable advocacy, we will refer to the motivations that cause the individuals to become more inclined towards it.

The concept of attorney power without dismissal

In none of the law books have the authors provided a perfect definition of irrevocable advocacy. There is no definition of it in jurisprudence. However, Article 679 of the Civil Code authorizes the granting of power of attorney without dismissal and even determines its forms. Therefore, according to this article, it can be stated that non-dismissal attorney power is the attorney power in which it is given during the necessary contract or that non-dismissal and resignation during the necessary contract is stipulated. In other words, it is a power of attorney according to which a lawyer and a client, who intend to cancel their authority to dismiss and resign after concluding a power of attorney contract, can act in this way.

Such attorney power is also revoked to the death and insanity of either party. According to Article 679 of the Civil Code: "The client may dismiss the

lawyer at any time, unless the attorney power or non-dismissal is stipulated in the necessary contract."

Based on this article, attorney power is seemingly the one in which the client has no dismissal right. It is also common among the people that the attorney power is limited to the abolition and loss of the client's right to dismiss. If this appearance should not be trusted, it should be known that the article is not intended to dismiss the lawyer by the client and is applicable to the lawyer and should not be assumed that the right of resignation of the lawyer cannot be revoked or restricted.

Immovable attorney power has become commonplace in the current practice and notaries always prepare and register such attorney power. A clear illustration of an immovable attorney power can be regarded in the hypothesis in which a person owes another and has no cash and, due to the pressure of the creditor, gives him the power of attorney to sell his property and withdraw his claim. This attorney power states that the power of attorney of the creditor from the debtor who owns the apartment must be accompanied by non-dismissal condition.

Motives for resorting to attorney's irrevocable power

Usually the main reason and motivation for resorting to irrevocable advocacy is to establish a lasting and irrevocable relationship between the client and the lawyer, explaining that in some cases, the attorney contract and its related laws do not meet the parties' opinions to the contract because each of the parties to the contract can break it. However, the motives that lead to irrevocable advocacy may be different. For instance, in Iranian law, which according to Article 1133 of the Civil Code reserves the right of divorce for the husband; the wife can become a lawyer for the husband on the condition of power of attorney during the marriage contract in order to divorce the husband if necessary. Article 1119 of the same law stipulates: "The parties to a marriage contract may make any condition that is not contrary to the requirements of the given contract in addition to the marriage contract or any other necessary contract, as if it is a condition whenever the husband takes another wife or is absent for a certain period or leave almsgiving,

or attempt to commit adultery against a woman's life, or mistreatment which makes their lives unbearable with each other.”

The woman is a lawyer and a lawyer in power of attorney who divorces herself after proving the fulfillment of the condition in court. Although in these cases, the case seemingly indicates nothing but the granting of irrevocable or non-resigning representation; the motives of individuals may be different. Therefore, individuals act with different goals and motives towards diverse contracts and in various circumstances.

Sometimes, the parties, instead of concluding a transaction, resort to irrevocable power of attorney, which, depending on the case, may be due to obstacles that as it may, some organizations and departments such as the Treasury, the Registry and the Municipality in some cases create to do certain things. For instance, we can refer to a person who buys a property but for some reason cannot prepare an official document that inevitably the buyer becomes the seller's attorney until after removing the obstacles and providing the essential arrangements such as registration to represent the seller should make a definite and official transfer of the property in his own name.

Sometimes, when the owner cannot openly sell his property, to achieve this goal, he tricks and gives the buyer a proxy in the sale and by revoking the right. Dismissal makes him confident in the possibility of buying property, although it should be noted that by concluding such a contract, the acquisition is not done because the lawyer cannot be considered the owner before the sale [3].

In many transactions, administrative and legal measures and arrangements are required. For example, car sales require a valid insurance card and obtaining certificates of non-violation, vehicle technical inspection, payment of taxes and municipal duties, and similar documents. Or, for instance, in real estate transactions, a building completion certificate and tolls are usually required. Obviously, preparing and obtaining the mentioned documents and certificates requires patience and spending time and frequent visits, which is not pleasant and desirable for some people. Therefore,

in such cases, sometimes the parties to the transaction turn to an immovable power of attorney to avoid these preconditions. In many cases, the parties refuse to draw up an official vehicle document by resorting to an immovable power of attorney. This is especially true in car deals. The reason is the significant cost of preparing a final document, as well as the ease and speed of advocacy [4].

In some cases, the condition of not dismissing a lawyer is to guarantee the client's obligation to the lawyer. For example, in an insurance contract, the insurer pledges to pay the insured person's losses in the event of an accident such as a fire. Insurance replaces the injured party (insurer) by paying the losses and in accordance with the insurance law (Article 30)¹ can sue the cause of the fire to compensate for the damage. In order to protect its possible rights against acts contrary to the insurance contract made by the insurer, the insurance company takes power of attorney from him in the insurance contract so that he can file a lawsuit against the cause of the accident on his behalf. In this type of attorney power, the condition is not to dismiss the lawyer on the insurer (client) so that he cannot create an obstacle to file a lawsuit against the cause of the accident by dismissing the insurer.

The Condition of Not Dismissing the Lawyer During The Necessary Contract

This condition, like the condition of representation during the necessary contract, has been proposed in Article 679 of the Civil Code, which can be imagined in two ways: a) As a condition of the result, the client is deprived of the right to dismiss the lawyer during the necessary contract; b) As a condition of the act that, while making the necessary contract, the client undertakes not to use the right of dismissal [5].

In this article, we will deal with the issue of whether it is only possible to insert the condition of lawyer non-dismissal by the client or whether the lawyer non-resignation can also be included in the necessary contract. We also examine the ability to

¹ Article 30 of the Insurance Law, approved on May 27, 1954, stipulates: "With this contract, he will be held liable to the insurer".

insert the non-dismissal condition as the condition of the result and the condition of the verb.

The effect of lawyer's non- dismissing condition during the necessary contract as a result of condition

If the condition of non-dismissal or resignation is a condition of result, due to the rule of will of the parties and the necessity of fulfilling the condition and ruling of Article 10 of the Civil Code, the right of dismissal and resignation will be revoked; therefore, the action of the parties regarding dismissal and resignation will be ineffective. This is the general form of the condition of non-dismissal or resignation as a condition of the result, but whenever the power of attorney contract is concluded first, then the non-dismissal or non-resignation of the lawyer is included as a condition of the result in the necessary contract or first in the necessary contract. Then, his non-dismissal or non-resignation will be conditional on the result; the power attorney will be realized immediately. Because the result of the condition is created during the necessary contract, the authority to terminate and disrupt the power of attorney by the conditional defendant will be lost [6].

Non-dismissal can also be brought in the form of a peace contract, which in such cases is obviously necessary. In such cases, using the format of a peace contract, there is no need to even cite Article 10 of the Civil Code, because according to Article 752 of the Civil Code, conciliation outside the scope of certain contracts is also valid and binding, and some legal writers believe that the title of peace is loaded on it [7].

Apparently, Article 679 of the Civil Code, which speaks of non-dismissal, does not mention the non-resignation of a lawyer, but it should be noted that the condition of non-dismissal should not be considered specific to the client, but given to each party (client and lawyer). They can be in some way conditioned for or against, so the lawyer condition of non-resignation as a condition of the result in the necessary contract can also exist. If this is the case, the attorney power without resignation will be in favor of the client. In this case, the conditional against the defendant is required not to resign, and if he acts otherwise, his resignation will be ineffective. For non-dismissal or non-resignation condition as a result condition, a certain period may

be set, in which case after the expiration of the specified period, the client and the lawyer will have the right to dismiss and resign, and if a certain period is not set until the original contract. Unresolved or the subject matter of the power of attorney remains, neither party will have the right to terminate.

The effect of the lawyer's non- dismissing condition during the necessary contract as a condition of action

The purpose of such a condition in the necessary contract is that the client in the necessary contract, such as a sale or marriage, undertakes not to use the right of exemption already acquired by virtue of the power of attorney; in other words, not to dismiss his lawyer or lawyer commit not to resign. There are different opinions about such conditions. Some have differentiated between different situations, and between the situations in which the dismissal of a lawyer causes irreparable damage to the situation in which the dismissal does not end to the detriment of the lawyer; they have expressed the opinion that in the first case, dismissal is not possible. Dismissal is not effective, but in the second case, considering that it is possible to compensate the lawyer, dismissal is possible and effective [8].

The criterion of this group for being irrevocable or not is the loss and whether it is compensable or not. Some legal writers in such cases, in any case, consider the power of attorney irrevocable, whether the non-dismissal is a condition of the result or a condition of the act. Of course, this group has not provided any reasons for their opinions in this regard. Some elders have also commented on the ineffectiveness of the condition of not dismissing a lawyer. In this case, Ayatollah Araki, in response to the question that whenever the condition of power of attorney becomes irrevocable during the necessary contract, can the client cancel that power of attorney and dismiss him?, says: "Dismissal of a lawyer is haram and against the condition but after dismissal, he is dismissed, because power of attorney is one of the permissive contracts and does not deviate from its truth, even if we make it conditional on the condition of irrevocable result".

In response to the question on the condition of attorney power for the wife in divorce, in the sense that whenever a woman stipulates in a marriage contract that the man is a lawyer in divorce and does

not return from this condition and the marriage takes place and if problems arise, then the husband returns from this condition, so whether the wife can divorce herself, Ayatollah Golpayegani replies: "Advocacy is permissible from contracts and the condition of not dismissing the lawyer during the necessary contract does not make it necessary. Ultimately, the obligation to fulfill the condition is obligatory on him as a duty, so if the husband violates the condition and dismisses the wife from the power of attorney, the performance of the power of attorney by the wife is not correct and divorce does not take place"[9].

Here, the non-effect of the condition of non-dismissal during the necessary contract has been specified, and its basis has been stated as the permission and permission of the attorney contract power. Elsewhere, he answered the issue that regarding that attorney power is permissible from contracts. If someone gives the attorney power to sell his house or something else during the foreign contract, he has no right to dismiss this power of attorney. Is this type of attorney power legally valid or not, and if it is correct, whether the client can dismiss him or not? Ayatollah Golpayegani says: "Assuming the issue, if during the necessary contract he stipulated not to dismiss the lawyer regarding the power of attorney, it is legally obligatory [10].

In the book *Manahal*, it is stated: "If in the case of attorney contract power, in addition to the necessary contract, it is stipulated not to terminate in favor of one and against the other; it is debatable whether this condition is necessary to be fulfilled or not. It is specified in the *Al-Faida* Assembly that it is necessary.

In this regard, there are problems in two ways, one of which is that according to the words of the companions, contracts representation is not necessary and the second reason is that the general ruling on contracts and conditions waives contracts such as representation and refers to contracts that are inherently necessary. In any case, the precondition is that the condition be observed, but the ruling on its necessity is close to correct".

Some jurists also believe that if the condition of non-dismissal is necessary as a condition of action during the contract. In this case, the right of dismissal is not lost and if the client uses it contrary to the condition, dismissal has its influence and the

attorney power is dissolved. A person who has a condition of non-dismissal in his favor can terminate the necessary contract. For instance, someone gives attorney power to another to sell his land after separation. Then, while concluding a lease or peace agreement between the two, the client undertakes not to dismiss the lawyer from the attorney power.

In this instance, if the client dismisses the lawyer, his representation for the sale of the house will be lost, but the lawyer will also have the right to terminate the lease or peace in which the condition of non-dismissal is stated. At the same time, the use of the option of violating the condition does not prevent it from being demanded if there is a loss from the dismissal of the lawyer.

The latter view and other views that are consistent with this view seem to be more consistent with the nature of advocacy since by inserting such a condition in the necessary contract, the power nature of attorney contract, which is permissible, will not change. In addition, it should be noted that the legal effects of disqualification are very diverse from the obligation not to do so. Whenever a person deprives himself of a right, which in our case is the right of dismissal or resignation, that right is basically revoked by him, but in the case where he undertakes not to do so, he still has the right, although has pledged not to do so. Therefore, the invalidity of an act contrary to the obligation cannot be demanded, but the violator should compensate the damages resulting from this contract breach. Regarding the lawyer non-dismissal during the necessary contract, the question which may arise is the client coming as a condition of the result or condition of the action in the necessary contract and then the main contract is dissolved for a reason. What will be the validity of the condition, in other words? Will the validity of the condition be lost and the power of attorney can be terminated? Or will it have any effect on its fate? To answer this question, it can be said that in the case of the condition of non-dismissal and resignation as a condition of action with the dissolution or annulment of the original contract, the subordinate obligation to not dismiss or resign will also disappear. The grant was terminated or retained in its natural state. In the case where non-dismissal is included as a condition of the result in the necessary contract, it can be said that whenever the original contract is dissolved, the condition will

also suffer its fate; as a result, the power of attorney contract will return to its original nature [11].

The first part of Article 246 of the Civil Code can be considered as a seal of approval for this claim, and in the first way, regarding the annulment of the original contract, the condition is also considered invalid, because a void contract cannot be expected to create an obligation.

The Lawyer Non-Resignation (Revocation of The Dismissal Right) During the Permissible Contract

Based on what stated earlier, we came to the conclusion that the condition of representation or non-dismissal of a lawyer could be included in the necessary contract. Here, we examined the issue that the power of attorney contract, in addition to being required during the contract, could also be brought as a condition of attorney power, the condition of non-dismissal and the condition of non-resignation during the contract. We also examined whether an agreement not to dismiss would be possible in the contract itself.

In either case, the condition may be a condition of the act or a condition of the result, and the condition may be in favor of one or both parties, or even in favor of a third party. The condition of not dismissing a lawyer during a legal contract may be fulfilled in two ways:

- 1- The condition of non-dismissing a lawyer is included in a permissible contract other than a permissible power of attorney contract, such as a loan contract or a deposit contract.
- 2- The condition of not dismissing the lawyer is included in the legal contract. Thus, when a power of attorney contract is concluded, it is stipulated that the client has deprived himself of the right to dismiss the lawyer.

In this section, in addition to these two cases, we will also explain the power of attorney in addition to the permissible contract. Of course, the accuracy of Article 679 of the Civil Code shows us that none of these cases is specified in it.

The effect of inserting the attorney power or non-dismissing during a permissible contract

Perhaps the most significant reason for the different effects of these cases is that the attorney power or the condition of non-dismissal during the

permissible contract is less strong than the one included in the required contract. Because the attorney power condition or non-dismissal follows the main contract and the strength of the conditional contract in terms of necessity and permission is the basis for determining the validity of the condition. In other words, the strength of the condition is closely related to the necessity and permissibility of the contract, and if the conditional contract is necessary, the condition remains valid as long as the contract remains and binds the conditional against the creation [12].

The conditional contract is also binding as long as the original contract is valid and remains valid and violation will not be permissible. In other words, the inclusion of such a condition in the contract is no longer permissible, does not make the power of attorney necessary, and the client can dismiss the lawyer after breaking the original contract at any time. Therefore, considering that a legal contract is required to be fulfilled until it is dissolved, the condition will also be irrevocable, and in this case, the condition of non-dismissing a lawyer during the necessary contract is similar to that of non-dismissing a lawyer during a legal contract. They state that the necessary contract cannot be terminated. Therefore, assuming that the original contract is permissible, the condition duration cannot be regarded more than the contract itself, whether this condition is the action condition or a condition of result. Seyyed Mohammad Kazem Tabatabai Yazdi in his book *Orwa Al-Wathqi* on Issue 13 of the chapter of attorney power states: "Will and conditionally cannot dismiss the lawyer. Because power of attorney is permissible, but it is necessary in terms of the condition ... and when the attorney power is conditional in a contract, the strong opinion is that as long as the contract remains, it is necessary to act on the condition and if the contract is terminated, the power of attorney will be terminated accordingly. However, based on the popular belief, the attorney power can be terminated without dissolving the original contract and if the lawyer is stipulated during the contract that he does not dismiss himself, he cannot dismiss himself .

In this regard, Seyed Tabatabai Yazdi points out that the original contract will remain irrevocable as long as it remains contrary to popular belief that the remaining power of attorney can be removed. According to this opinion, Seyed Tabatabai can

dissolve the attorney power by dissolving the main contract. Also, if the lawyer is required not to dismiss himself, he is also obliged to act as a power of attorney, because power of attorney is also required by him [13].

In this regard, the late Sheikh Morteza Ansari also says: "The condition is necessary when the (conditional) contract is a necessary contract because the condition of the condition in a permissible contract cannot be more than that of a conditional contract, which is a permissible contract, but is like a promise.

Regarding a promise that is not binding, the well-known opinion of Imami jurists is that the condition is not binding during the permissible contract because the main contract itself is permissible and deviated; as a result, the condition is not necessary. Perhaps this group believes the non-fulfillment of the condition in the contract is permissible because they compare it with the condition in the necessary contract, because the necessary contract is stable and it is necessary to fulfill; consequently, the condition is also necessary.

In response to this group, it can be mentioned that although the condition in the contract is permissible, it is less stable than the condition in the contract, but this is not a reason for us to consider it as not necessary to fulfill the condition, but as long as if the original contract remains valid, the condition will also be valid and irrevocable. In this regard, Emami also considered the condition of non-termination during the permissible contract to be correct and believes that in this case, as long as the original contract exists, the condition must be fulfilled. No longer does it make necessary that the conditional defendant can dismiss the lawyer by breaking the original contract and indirectly release himself from complying with the condition.

Katozian also states in this regard that the condition in the permissible contract is not obligatory, because as long as the permissible contract remains as well as the condition of non-dismissal and since breaking the original permissible contract is the only way to eliminate the condition, therefore, this is a kind of obligation leading to the limits of the original contract. The appearance of the provisions of the Civil Code is so irrational that it should be abandoned. If the common will of the parties can create an obligation

without being limited in terms of form and formalities, what is the difference between their request coming in the necessary contract or in the legal contract? None of these articles explicitly states the invalidity of the necessary condition, so in interpreting it, we should pay attention to the spirit of civil law, which is the rule of will, and consider the above cases as common to the common cases, without their meaning negating the necessity of the condition marriage is permissible.

Of course, the agreement on the power of attorney contract or its non-termination in addition to another lawful contract, indicates that the parties intended to make the attorney power issue to another lawful contract that as long as that contract remains, the attorney power remains and no longer was their intention to necessitate and perpetuate it, nor to deprive it of the right to disrupt it completely.

Lawyers also consider the attorney power in a permissible contract to be correct and its function, and as long as the basic contract remains in place, its provisions are considered irrevocable and binding. To confirm the opinions of this group, it can be mentioned that the provisions of any contract, whether necessary or permissible, must be implemented by the parties as long as it remains; as a result, the power of attorney contract or non-dismissal of a lawyer is included in one of the other permissible contracts. When the original contract has not been terminated by the parties and is valid, the attorney contract power is also valid for the parties and will continue to exist, but considering that the original contract is permissible here and its termination by either party, the parties are possible and probable. With its termination, the power of attorney contract that is included in it will also be dismissed. With the recent view, the popular opinion can also be modified. In addition, if we believe that the agreement and desire of the two parties to the contract can create a requirement and we do not need special formats and formalities for it, what difference does it make if this request is included in the necessary contract or another permissible contract.

The effect of the lawyer's non-resignation condition in the power of attorney contract

The client may deprive the lawyer of the right to dismiss the lawyer while concluding the power of attorney contract. In this case, it should be

examined in terms of legal principles whether such deprivation of the right to dismiss by a condition during the power of attorney contract is contrary to law or not, what the effects of this condition are and whether in this case, the client has the right to dismiss the lawyer or not.

Some consider such an agreement in addition to a power of attorney or any other lawful contract to be fundamentally illegitimate and invalid, without considering it effective in the validity of the contract. Followers of this view believe that the power of attorney contract has been declared permissible by the legislator and the agreement contrary to this opinion of the legislator is invalid, but it has no effect on the correctness of the power of attorney contract. Some also believe that the power of attorney contract can be concluded independently and in addition to the main agreement as necessary. This group argues that such an agreement is contrary to the requirements of the contract, not contrary to its requirements. That is, none of the contracts is inherently based on necessity or permission, but in a way the expectation of the parties to any contract of permanence or permission is that this kind of expediency can be disrupted by the parties according to personal interests and decided otherwise [14].

In other words, except for the cases specified by the legislator, the nature of the contract can be concluded arbitrarily with personal will and desire, and the personal interest of the parties takes precedence over the specific interest. Another group of lawyers emphasizes that Article 679 of the Civil Code stipulates that in order for a power of attorney to be binding, the condition of non-dismissing a lawyer should be included in the necessary contract in order to obtain a contract from that contract. The power of attorney states that the client has accepted an obligation outside the power of attorney to the lawyer, and this condition is to ensure the fulfillment of that obligation. In fact, the benefit of the lawyer and his right to the subject of the lawyer, such as the sale of a car lawyer and the like, is a legal reason that can make this condition binding on the client and make it irrevocable. Therefore, the inclusion of this condition in the power of attorney document is sufficient and as long as the lawyer benefits, this condition will remain binding on the client. Mutual obligation of the parties and the existence of a legal reason can

be based on Article 10 of the Civil Code as well as Article 6 of the Code of Civil Procedure based on the mandatory condition of not dismissing a lawyer in the power of attorney contract, without the need to include such a condition in another necessary contract. Some jurists, in addition to considering the condition of not dismissing a lawyer during the contract as unimpeded, have also considered the condition of not dismissing during the representation as valid, with the explanation that they have used the necessity in two meanings; necessity means a special meaning that is used for necessary contracts that after concluding the necessary contract, neither party has the right to terminate it and the insanity, stupidity and death of each party have no effect on the dissolution of the contract and necessity means. It also means that the contract is not terminated by termination after the conclusion and there is no such option for the parties, but insanity, stupidity and death break the contract, so he considers such a contract necessary and considers it a necessary contract.

Some scholars have regarded the condition during the contract to be absolutely necessary and not differentiate between whether the original contract is necessary or permissible, with the justification that whenever the condition is correct, the license will be invalid because the license is relied on that is, the condition to be terminated independently without terminating the original contract, while the reasons for the condition influence indicate the need to fulfill the condition meaning.

Some jurists, provided that they are not dismissed during the power of attorney contract, have introduced distant forms and have said that this implies distance.

The justification of this group in this regard is that in order for the power of attorney contract to be fulfilled in the outside world, it stops that the condition of not dismissing the lawyer is applicable and if necessary, the condition of not dismissing the lawyer also stops the necessity of the contract. The state will be created far away, which is a void [15].

The argument² made by others is that the necessity of the condition ceases to necessitate a contract of representation. While the necessity of the power of attorney contract itself depends on the necessity of the condition. Especially, the condition in terms of necessity and permission in the permissible contract cannot exceed the sentence of the original contract which is permissible, but like the original contract is permissible and is a kind of promise that is not binding. Therefore, the condition of non-dismissal during the contract is not binding and is invalid due to the existence of distance. Against this objection, it can be said that the inclusion of non-dismissal in the power of attorney contract eliminates the possibility of termination of power of attorney and in accordance with article 10 of the Civil Code, which respects the will of the parties, like the agreement in the contract, it will be necessary to be fulfilled and to be observed. In other words, when the fall of the right of dismissal or resignation is included in the power of attorney, considering that the necessity of the contract is due to the rule of will, respecting their wishes and fulfilling the condition requires following its provisions. In this regard, Katouzian's viewpoints is as follows: In order to prove the ineffectiveness of the condition, it may be said that in Article 679 of the Civil Code, the only exception is that the power of attorney or non-dismissal necessary contract is required, but it is still difficult to accept such an argument, because with the principle enshrined in Article 10 of the Civil Code, what binds individuals in private contracts is their agreement, not the form of the contract. Bringing a power of attorney in a contract is a sign that both parties do not want to completely deprive themselves of their freedom and only want to subordinate the power of attorney to it. But when the right to dismissal is announced while representing a lawyer, this sign no longer exists.

As a result, the necessity of respecting their will and fulfilling the condition requires that its provisions be followed and the attorney power becomes a necessary contract. If the parties to a contract, neither in power of attorney nor in the necessary contract, but in an independent agreement, agree not to dismiss that this compromise is in accordance with Article 10 of the Civil Code, is this compromise not valid? So, what

² If necessary, the conditional contract in that condition should be fulfilled, because the condition in the authorized contract does not go beyond its ruling on the

difference does it make if the same compromise is a condition in the power of attorney contract.

Agreeing on The Condition of Non-Dismissing and Resigning a Lawyer While Representing Him

They consider the lawyer mere interest as a criterion and state that if the lawyer is a beneficiary in the attorney power, the condition of not being fired during the power of attorney contract is valid. We have already stated that a jurist considers the condition of non-dismissal during a permissible contract to be fulfilled due to the general hadith of "the believers under their conditions", but by terminating the required contract, the condition can also be terminated.

The condition of non-dismissal while advocating creates a far-fetched illusion. Some jurists have the same opinion and invalidate the issue due to the distance, but this objection has been answered by the jurists that the necessity of the contract stops at the necessity of the condition, but the necessity of the condition does not stop at the necessity of the contract and stops at the unilateral obligation. Or the contract is one-sided and the general hadith of "the believers on their terms" rules the validity of such a condition.

There are numerous jurists who consider the condition of non-dismissal during a legal contract or attorney power to be correct. According to some jurists, the condition during a legal contract is not obligatory because as long as the contract remains permissible, the condition of non-dismissal remains; in other words, since the only way is to break the contract is permissible so that the condition is eliminated. This is a kind of obligation leading to the contract limits. The main condition in a lawful contract is statistics on the parties' intention to allow the condition, but if the parties state that they intend to make the condition necessary, the condition is removed and because the citizenship of the contract condition is not a rule of public order, the condition is necessary. In other words, the condition here seems to be correct according to Article 10 of the Civil Code, but another question that arises is whether a permissible contract can be made binding by mere condition or

original contract, but is like a promise, so the requirement of the condition depends on the necessity of the contract.

whether the condition should be included in the necessary contract, if the common will of the parties can create an obligation without any restrictions in terms of formalities (Article 10 of the Civil Code). It does not matter if the request is made in the necessary contract or in the legal contract. In the following, none of these cases of invalidity explicitly states the necessary condition. Therefore, in interpreting it, we should pay attention to the spirit of civil law, which is the rule of will, and consider the above cases as common to the common cases without their meaning, the necessity of the condition. Denying permissible in the contract, according to some professors about the condition in the power of attorney contract or bringing power of attorney in the lawful contract is a sign that the parties do not want to completely destroy their freedom and only want to subject the power of attorney to the contract. But when the fall of the dismissal right is announced while representing, this sign no longer exists. As a result, the necessity of respecting their wishes and fulfilling the condition requires that its provisions be followed and the attorney power becomes a necessary contract. Finally, this argument is supplemented by an illustration. Thus, if the parties to a contract, neither in the necessary contract nor in the power of attorney themselves, but in an independent agreement, dismiss the non-dismissal agreement and subject the said agreement to Article 10 of the Civil Code, could not we accept this compromise? If so, what difference does it make if the same compromise is a condition in the power of attorney contract, what requires is a compromise, not a form.

Other educators also consider the condition of non-terminating the permissible contract to be correct, and what is known is that the conditions in the permissible contract do not have to be fulfilled. This is because the conditional defendant can indirectly release himself from following the condition. Regarding the condition of the contract's non-termination, he considers the permissible contract in the sense of the condition to be contrary to the contract and consequently ineffective, but in the case of power of attorney, the condition is considered correct and necessary for the contract that they accept termination in cases where permission is necessary and do not consider the opposite condition to be effective. It seems that some opponents state the condition of non-dismissal while acting as a lawyer. This conflict

also exists in the opinions of other scholars who point out that in his opinion, there is no conflict in the deposit agreement, but in some cases, there is no conflict. It makes a logical difference. Thus, for instance, based on his viewpoint in the discussion of the deposit, if the parties stipulate that the right of termination and also the effect of the provision of Article 954 are both revoked, this condition is not valid because it is against public order, although it agrees with the rule of will. On the other hand, it alters the nature of permission because it creates a right [16].

This is the same argument that the opponents make in rejecting the condition of non-dismissal while representing. However, if the parties waive the right to terminate and maintain the second effect of the lawful contract, the condition is correct. For some reason, it seems that there is no conflict in these words and their opinion is in a certain stream.

1- Since the opponents of the non-dismissal condition consider the license as a necessity of the nature of the contract, they believe that in this matter all permissible contracts (specifically permits) should have a single ruling, or we should accept the condition of non-termination in all of them for justified reasons for accepting such a condition.

However, the proponents say that permission and necessity are not necessary for the contract nature and the will of the parties can decide on it, and only what limits this will is public order or morality, so in a permissible contract, the non-termination condition may not be dissolved. It should be public order and not in another marriage.

2. The opponents of Articles 186 and 954 of the Civil Code believe that a contract is a lawful contract which can be terminated by either party and is destroyed by death, insanity or insanity, or it is a necessary contract that neither party can terminate and does not disappear with death, madness or stupidity. Finally, among the opponents, those who do not consider the license as a necessity of the nature of the contract; interpret the contract as an irrevocable contract if there is a condition of non-termination that is, they consider the condition to be correct, but due to the ruling of Article 954 BC, they still consider it permissible.

It seems that the definition of a permissible contract is nothing but what is stated in Article 186 BC and the above article is in the position of

defining a permissible contract, now all the contracts that the law considers permissible are legal permissible contracts which are permissible in terms of application. Since permission is not a requirement of the nature of the contract and this is also accepted by the Civil Code, Articles 679, 777, Article 108, Article 120 BC, will can decide on the permission of a legally permissible contract, unless otherwise it is a matter of public order or morality, but Article 954 BC is an authoritative rule according to which the legislator has carried a ruling on legally permissible contracts, that is, contracts which he considers permissible in terms of the application of the law.

When the parties in the contract are allowed to terminate the condition of non-termination, the condition is correct and because the possibility of termination is eliminated, the contract is excluded from the definition of permissible contract (Article 186) and the contract is irrevocable, but in this will, the joint cannot cancel the jurisprudence rule (Article 954 BC). Therefore, the sentence of Article 954 BC remains; it may be stated that if the contract becomes a necessary contract, it is not included in Article 954 BC, because Article 954 BC at the beginning of the article allows the ruling to govern all contracts and the opponents mainly do not consider the non-termination condition to be correct, because based on their opinion, the effect of article 954 BC does not disappear with the agreement; however, the problem is that a permissible contract after the non-termination condition does not fit in the definition of a permissible contract and the contract becomes irrevocable and the condition is correct, because the law does not consider the license as a necessity of the contract nature and will can decide on it to the extent that it is not contrary to public order, but the contract is subject to Article 954 BC after the condition, because the legislator means permissible contracts; contracts that the law itself considers permissible in terms of their application, and even these contracts are quite clear.

The philosophy of this ruling is that they are permissible in the senses that since the parties have the right to terminate it (Article 186 BC), it will be terminated by death, insanity or stupidity. Rather, the philosophy of this ruling is the nature of legally permissible contracts (in terms of application). In fact, because their nature is permission, death,

insanity or foolishness is eliminated in the case where growth is valid. The condition is not contrary to public order. The condition is valid and since the parties can not terminate the contract, the contract is not permissible, but the effect of the permission contracts is still valid on it (Article 954 BC). Because if the parties stipulate that the right of termination and the ruling of Article 954 BC will be revoked, the nature of the permit will not alter [17].

Conclusion

The attorney power is a legal act based on permission, and if it is declared as required, it will be accepted. The contract nature will be obtained; the attorney contract power is not an intrinsic part and its immutable essence, but its license is considered a right and at least in cases where it is a voluntary dissolution, it is possible to limit and avoid this will exercise. This contract, with its distance from general rules and obligations, has its own special features, including the fact that the customary sequence of acceptance after the requirement is not necessary and its annulment is not associated with the annulment of the initial permission.

Preventing the dissolution of the attorney contract power is limited to the inclusion of various forms in the external contract, but based on Articles 10 and 960 of the same law, private agreements and contracts, including the agreement and commitment not to dismiss in areas that are contrary to law and public order. Morality is not good, it is recognized as valid and enforceable, and dismissal and resignation, which are considered as voluntary cases of removal of the power of attorney, and can be revoked. Therefore, the lawyer and the client have the right to apply or cancel it.

1- Merely granting a power of attorney without dismissal does not invalidate the client's right in relation to performing the issue of attorney power, nor does it deprive the client of the right to attach a lawyer, trustee or supervisor to the lawyer unless the contrary is specified in the contract or its fall is implicitly agreed. Therefore, the agreement and will of the parties has an important and decisive role in this regard.

2- If the attorney power is concluded as a mere attorney power in its true meaning, then all the effects and rulings of the attorney power will be applied to it, and the client can do the power of attorney himself or even attach a lawyer or

supervise and by this action restrict the powers of the lawyer.

3. In the case of attorney power, the content of which is a kind of guarantee of the lawyer's right or the sale of property or the transfer of rights, the client's authority to perform the subject of the attorney power is lost, even if it is not specified. The main effect of such attorney power is to create an obligation to transfer to the client and also to create a right for the lawyer, and it will be a kind of guarantee of transfer of the client's rights to the lawyer, which is a kind of obligation not to transfer to a third party. Of course, in such cases, the ownership transmission does not take place, but by implementing it, the phenomenon of transfer can be achieved.

4- The condition of survival of the attorney power after the client death is not valid and the provision of Article 777 of the Civil Code in this case is specific to the mortgage and it can not be justified by appealing to the issue of inheritance of the power of attorney to the mortgagor. However, in cases where the attorney power is given to guarantee the fulfillment of an obligation or it means the sale of property or the transfer of rights, citing the right created for the lawyer does not end in death.

5. The legal entity of the attorney power is in the tramforming position, although it is theoretically acceptable; however, in the absence of an explicit legal text, it has caused a conflict in the judicial procedure.

Therefore, proving this legal entity in the courts and justifying and convincing judges is a difficult and complicated task. Hence, in such attorney power, a general verdict cannot be issued, but based on the common and the parties' real intention, as well as the situation, conditions, evidence and other reasons, according to Article 4 of the Code of Civil Procedure, a task must be assigned in each case.

6. Citing Articles 10 and 219 of the Civil Code and the principle of the rule of will requires that the consent to non-dismissal and resignation be valid as an independent and private contract and that the parties' confession be effective on the occurrence of attorney's non-dismissal power.

Even the condition of non-dismissal or the condition of attorney power in addition to the attorney contract power or other permissible contract is valid for the parties as long as the lawful contract is valid and will continue to exist. Therefore, the agreement of the parties to the power

of attorney contract should not be limited to the cases enumerated in Article 679 of the Civil Code, because the legislator has mentioned the common method in this article.

The implementation of this article should be performed by applying the restrictions provided in Articles 959 and 960 of the Civil Code.

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