J. Appl. Environ. Biol. Sci., 5(6)340-351, 2015

ISSN: 2090-4274
Journal of Applied Environmental and Biological Sciences
www.textroad.com

The Civil Liability of Inspectors in EPC Contracts

Hormoz Asadi Koohbad*, Mohsen Poorjam**

*Department of Law and Humanity, Khorasgan (Isfahan) Branch, Islamic Azad University, Isfahan, Iran
**Department of Law and Humanity, Khorasgan (Isfahan) Branch, Islamic Azad University, Isfahan, Iran

Received: January 16, 2015
Accepted: April 1, 2015

ABSTRACT

Especially in EPC contracts as one of most important contracts in big industries including oil, gas, dam, and electricity plants, the civil liability arising from inspecting is an important but neglected issue. So it is an important matter to know the differences between EPC and other kind of contracts, inspectors' duties and their responsibilities according to law and liability theories, and arguments that may be happened between contract's parties about a wide range of issues–from the contract itself to inspections, standards, environmental problems particularly in international contracts for determination of obligator to indemnify for damages. And this also must be find that this liability where is an obligation in solidary kind and where is an obligation in solidum one, and inspector and inspection is under cover of which insurance. This paper has examined such case study by an analytic-descriptive method. Then according to the research's assumptions and acceptation of the fault theory in civil code and because article 90 referred to violation and negligence, and using no damage rule it can be said that if there is a contract then transgression of its contractual clauses will bring responsibility and if inspection conditions which are very important for quality determination weren't considered properly then arguments will be settled by a judgment board or court. Therefore according to mentioned clauses in contract and regulations related to inspection and liability, if negligence in inspection leads to environmental damages based on article 50 of the constitution law, with attention to mentioned conditions in contract, professional liability insurance must indemnify for the damages.

KEYWORDS: Civil Liability; Inspector's Liability; EPC Contracts; Fault and Danger Theory; Causality relation; Liability Insurance

INTRODUCTION

Civil liability is an important section of civil code. Because of extensive developments in modern society, now to enhance justice it needs a solid legal system more than ever. And fair distribution of damage is a new value in this kind of responsibility. In the field of coercive and legal liability, civil liability is a legal responsibility that forces responsible person to compensate damages from his/her harmful activities. Civil liability in its general sense is against penal liability and in its specific sense is a contractual obligation against coercive legal liability. An obligation that in such cases obligator has about obligee is called as "contractual liability". Contractual liability in the French civil code is placed under title of "obligations' effect" (fourth section of chapter three, article 1146 onward, French civil code) and also this is the case in Iranian code. The responsibility related to inspector's duties about inspection and objects which are under his control in Iranian law is based on a fault that will be realized because of negligence in protection and surveillance by inspector and the party who suffered damage must prove the fault.

The Concept and Purpose of Civil Responsibility

The word of liability in Persian means undertaking, obligating and having duty to do a work (Mo'in, 1371, 4077). Civil liability included the responsibility for damages that an individual or object under control of person may produce for another one and also the responsibility for non-performance of contractual obligation (Yazdanian, 2000, 32). The aim of civil liability is discussion about this matter that practically what kind of needs and purposes will be fulfilled by such obligation. It is common to say that "the aim of civil liability is getting compensation of damages for harmed ones and their consolation, punishment of offender and preventing doer and others from committing other harmful acts and establishment of peace and stability, and promotion of a specific moral manner in society" (Badini, 2005, 320).

Corresponding author: Hormoz Asadi Koohbad, Department of Law and Humanity, Khorasgan (Isfahan) Branch, Islamic Azad University, Isfahan, Iran.

The Concept of Civil Liability in Britain law (Quasi-crime)

According to Winfield's definition, which common law adduced to it, civil liability arises from violating a duty that at first is defined by law: such duty is a general one for persons and its violation can be compensated through filing a lawsuit to claim unliquidated damages. (Winfield was a well-known professor of Cambridge University and the editor of Cambridge Law journal. His book entitled Law of Torts was the textbook of law in Britain for long time). Prosser and Keeton in their book about law of torts stated that civil liability is a kind of civil wrong different from contract violation and court provided a way to compensate it as filing a lawsuit for its compensation (Prosser and Keeton, cited from Badini, 2005, 36). The issue of liability in Britain law is totally different from French law. A sentence like one appeared in article 1382 of the French civil code which stated that "a person whose wrong leads to a loss for another one is responsible to compensate it" for a British person is a moral statement not a legal rule, or this is the case about what appeared in article 1384 that said everyone is responsible about damages arising from the action of things under his/her control (Rene David, 2010, 112). In summary, civil liability law is about the rights and interests of people that are protected by law (Darabpoor, No. 44 and 45, 67-99, 2008).

Classification of Civil Liability

Into two sections: in its general and extensive sense it is an obligation to compensate any damage whether It arises from legal events (acts that create obligation without will of production) or legal actions (acts that create obligation by will of production) (Yazdanian, 2007, 49). If person make a loss for another one without any contract between them, or if there any, that loss has no relation to the contract, referring to liability is a non-contractual matter (Hasani, Alireza; 2013, …)

It can be divided

The Concept of Contractual Liability

Some believed that contractual liability is obligator's responsibility in a contract which he/she doesn't perform it or doesn't fulfill it in conformity with contract. In other words obligator in contractual liability doesn't perform his/her obligation which arises from contract whether intentionally or because of negligence (Ja'fari Langeroodi, 1993, 288). Definitely we mustn't mistake contractual liability for contractual obligation, because contractual obligation roots in productive will and engenders will and mutual demand, but contractual liability is the penalty of promise breaking and is a part of civil liability that will of production doesn't engender it, rather it is violation of an obligation which is a non-productive act engenders it, therefore with attention to the origin of this liability which in way has relation to contract we call it contractual liability (Katoozian, 1992, 268). The contractual liability is a responsibility that will be engendered through non-performance of an obligation which arises from contract (Ashoori, 2010, 24). It may be said that if damage compensation is stated in contract clearly (explicit obligation) and if it is as clear declaration (implicit obligation) then it has contractual essence, but if damage compensation doesn't arise from explicit obligation or implicit mutual obligation and it is only because of law, then it has coercive essence (Ashoori, 2010, 26).

The Difference between amount of Contractual and Coercive Demandable Compensation

About amount of demandable compensation in contractual liability, only direct damages which are expectable in the time of contract conclusion may be demanded. But in coercive liability the compensation for any direct damage may be demanded, whether in time of conclusion may be predictable or not (Al-Sanhoori, 1998, 2-10). Now we can ask this question that is demand also a condition for fulfillment of contractual liability? Demand is an official thing and specific to contractual liability, but making an application isn't necessary about coercive liability (Al-Sanhoori, 1998, 851).

An Analysis of Fault Theory and Other Theories of Responsibility Arisen From Inspection

Therefore what is understood of fault commonly is violation and negligence (Bojnoordi, 1992, Vol. 2, 50). Violation is happened when person has done a work which mustn't be done, and negligence is happened when person hasn't done a work which must be done (Bojnoordi, 1992, Vol. 1, 151; Makarem Shirazi, 1994, Vol. 2, 278). According to a definition by some jurists fault is to do an act or avoidance of an act both in disconformity with country's law, common law, or contract (Doroodian, 2008, 120). According to this theory a doer is responsible for compensation of damage if he/she has committed a fault and the damage is arisen from that fault and this is the causal relation between damage and fault that can justify damage compensation (Yazdaninan, 2000, 43).

The Theory of Danger

Based on dangertheory, if a person causes a damage then he is obligated to compensate it whether he is faulty or not. Those who advocate this theory say that the obligation to compensate for damage in civil liability law isn't a punishment then it doesn't need fault. It ultimately is a transference from one property to another one (Maraghi, Abdolfatah bin Ali (Mirfatah), 201, cited from Yazdaninan 2007, 96-98). Also for commonweal in some case it isn't a proper attitude that we limit liability only to fault theory and the compensation won't happen completely in this way (Katoozian, 2995, 213). Therefore it can be said that in Iranian law, liability is based on fault, in other words, the liability based on fault is the common rule and the liability based on wrong is an exceptional case (Yazdanian, 57, Vol. 1, 128). And in this theory for some if there is a liability for persons without harmful actions, then this may lead to economic recession. Therefore also in this kind of liability, namely danger-based liability, there must be a kind of harmful action (Yazdanin, Vol. 1, 129).

Reference of No Damage Rule to Liability

Our constitution also, in many articles, has referred to the no damage rule. For example in the article 40 it said: "no one is allowed cause damage to others or to commonweal because of his/her interest." And the article 49 stated that "everyone is the owner of his/her business and no one is allowed to prevent others from their businesses for his/her business." Also the focus of the article 50 of Iranian constitution is the environment. This article has forbidden any kind of destruction and pollution of the environment and regarded its preservation as a collective duty. The no damage rule is available also in the article 171 (Iranian Islamic Republic Constitution Law). For many faqihs the aim of the no damage rule is that to remove decree. And it isn't a proof for liability and civil liability. Adducing this rule doesn't lead to a justification to issue a rule for civil liability and about application of the no damage rule for liability is dependent on faqihs' affirmation, because according to the opinion of most faqihs this rule isn't proper to decree for liability and isn't an evidence for it. In the contrary to common opinion, some believe that the no damage rule implies liability (Maraghi, Abdolfatah bin Ali (Mirafatah), 201, cited from Yazdanian, 2007, 96-98). Therefore the no damage rule may be a source for civil liability. In this sense that there mustn't remain no damage uncompensated in society and any damage must be compensated. It seems that, overlooking the concept of the rule, it is right to believe that civil liability is realized through adducing the no damage rule, because when damage is happened, reason says that it is necessary that person who makes damage to pay compensation for damage (Yazdanian, 2007, 100 and 108).

The Background of FIDIC Contracts

FIDIC is an abbreviation for French term of Federation Internationale Des Ingenieurs Conseils. FIDIC association founded in 1913 by merging three national consulting engineers associations in Europe. This association is known as a the reference for compilation of standard contract forms for engineering projects of constructional, mechanical and electrical facilities (Farshadfar, A Guidance for Contract Conclusion by Method of Planning and Construction, 2013, 24). Since EPC contracts have a specific situation in developmental and constructional projects and their role is increasing continuously, so we will discuss about them here. FIDIC contract is known as an international standard (Dr. Jur. Tunay Koksal, July 2011, P 140).

The Background of EPC Contracts

Here we will use owner or employer word instead of client word, because if we use client word it means that all needed capabilities are laid in it so there is no need to consultant or contractor. So it is advised that this word to be used less. EPC contracts are used more than ever now in our country and because of its main advantages, namely certainty about final price and definite date for project accomplishment, such kind of contracts are welcoming more and more (Farsharfar, The Guidance of Contract Conclusion by Method of Planning and Construction, 2013, 56).

EPC Contracts

Engineering, Procurement, and Construction (EPC) contracts are defined as following: EPC is a contract to perform all or some parts of various stages of project engineering (primary, basic, and detailed engineering); supplying and procurement of materials and instruments for project and related technical services; constructional operations; installation and initiation and operational tests and related secondary services which all of these will be performed by contractors simultaneously (except basic planning which is upon employer) (Kiani, The Examination of Specifications and Application Range of Planning and Construction Method, 2005).

The Advantages of EPC Method

1- Less need to management and coordination by employer. 2- Availability of a definite primary price and primary time tabulation. 3- Professional interferences become inter-project and aren't included employer (R. L. Hartje, 2000,

48). 4- Employer knows surely about final price and the time of project completion. In this method it is easier to use investment instruments as finance method.

The Disadvantages of EPC Method

1-Mybe there is a decrease in quality because of savings and planning changes by EPC contractor. 2- Executive documents aren't completed until fulfillment of obligations, so maybe oppositions about quality and planning to be appeared in future. 3- If contracts weren't consistent then it may leads to inefficiency and confusion.

Iranian National Oil Company and EPC Contracts

Actually, EPC contracts are those which signed between a national oil company (for example Iranian national oil company, NIOPDC) and an international oil company. So the most important difference between such contracts and other ones is that government in such contracts isn't entered directly. National Oil Company itself undertakes contract conclusion usually. Therefore employer in this method has only limited control over the project and it mustn't interfere in contractor job, and supervision over work progression and to be sure about its conformity with project time tabulation, control over determined quality, performance of tests about doing works in a good way is upon employer's representative in EPC contracts. In such contracts principally supervision and control of project is upon employer's representative. As the name of such contracts demonstrates there are three bases in them: A: engineering, B: procurement, supplying and purchase of equipment C: construction. These three bases can be appeared in a legal entity (a company); but it is usual that three separate entities will establish a consortium or a joint venture through contract as an EPC contractor. In the time of wrong works by one these three sections or if their functions weren't as what is expected, because there is a consortium and unity among different sections according to contract, the employer can go to contractor not to wrongdoer section directly. So because a legal personality as EPC company has formed, employer only can appeal to consortium's contractual liability and can't come to sections directly. But it is obvious that after compensation payment by consortium, the liability will be divided among them according to their fault. The former EPC consortium have received wage for their activities from employer company. But now EPC contracts include finance section also. In the other words, in addition to three mentioned sections, a bank or financial institute undertakes project financing. The consortium shares in the project's production with national oil company at the end. This kind of contract is called EPCF and is the newest form of such contracts in oil and gas industry.

EP Contract versus EPC Contract

Execution, quality control, and project control in EP contract is upon employer. In execution of big projects of the country different models are used. The most common model which is used in execution of the country's big petrochemical projects is engineering, procurement (EP) model (Sebiati, Key in Hand Contract, 2011). Employer or its consultants, in key on hand model, only are present in bid process and supervision over contractor's operations.

The Forms and Regulations for Internal and International Contracts

Usually contracts have three sections:

1- An agreement that included main materials of contract.

2- Contract's general conditions that is existed in all contracts for example contract's description, force major, contract cancellation, and so on.

3- Contract's specific conditions or some changes in contract's conditions by parties.

In the case of conflict between three above sections, agreement, specific conditions of contract and general conditions respectively have more priority to each other.

The Foundation of EPC Contracts Conclusion in Oil Ministry and Inspector Selection

General supervision over project is upon employer. When a consultant is chosen, a part of employer's responsibility is upon consultant as employer's representative. According to the clause 1 of article 50 in contract's general conditions, "employer may assign the technical inspections for some parts of contract's subject to proper persons or companies to do their assigned task under employer's representative."

Inspection Definition

According to the clause 2 of the article 1 in guidelines for qualification confirmation of inspecting companies and regulations for inspection of goods, the contract of inspection is defined as follows: "a document signed between purchaser and its legal substitute and inspecting company which inspection range and limitations of parties' duties are stated in it." (Mohammadzadeh, Abbas; Iranian Industrial Standard and Research Institute, No. 40863,

223079; 2010). And inspector also is defined so, inspecting and quality control company, quality control in construction process and about certified contractors, is the contractor itself. For example Technical and Engineering Company for Project and Inspection (private joint stock) is registered in registration and industrial ownership office dated 9th march 1984, No. 55648 which its main activities are about A: engineering, B: procurement, and C: construction.

The Tasks and Responsibilities of Inspecting Companies and Inspection and Evaluation of Conformity

A: Inspection of goods and services according to contract and inspection range regulations. B: To be responsible when according to what is determined in inspection range the fault about quantity and quality of goods and services was proved. C: Issuance of inspection certificate according to the company's regulations after evaluation of goods conformity with standards determined by purchaser and standards of inspection range (The Article 13 of Regulations for Qualification Confirmation of Inspecting Companies and Regulations for Inspection of Goods by Industry and Mine Ministry, Standard and Industrial Research Institute, No. 40863/223079, 27th December, 2010). And the method of conformity inspection-evaluation is: 1- eye and physical inspection, 2- eye and physical inspection with evaluation of documents, 3- eye and physical inspection with sampling and tests.

Nondestructive Test control

This document helps inspector to decide in what cases to test from vessels, and what kind to test must be done and how much. This document is usually prepared by engineers regarding related standard requirements and also technical requirements defined by customer (Dadkhah, Sa'idreza, Summary of Pressure Vessels Inspection, 2007, 4).

The Terms of Contract in Inspecting Companies

Contractual Responsibilities: inspection certificate issuance can't remove seller's contractual responsibilities for quality, packaging and marking, and also can't eliminate purchaser's right to make legal action against seller for damages after inspection or some cases that weren't seen by inspector during random inspections.

Obligation: inspecting company is obligated to inspect works precisely and professionally in the accepted inspection range, and to accept all faults in the inspection range which are proved by customer. Bekhrad international inspecting company, for example, never accepts liabilities and obligations for proved faults in legal authorities ten times more than inspection fee in proportion to the inspected part of cargo and its amount isn't more than 80,000 Euros (The Contractual Conditions for International Inspection Services in Bekhrad Company, http://bekhrad.com/Persian/Default.aspx?ID=1017)

The Description of Contract's Subject for Supervision and Inspection Services in the Project of Water GRP Piping of Malayer City

The subject of this contract is about level one supervision and inspection services for 38 kilometers GRP piping in Malayer city (Kalan dam) according to the description of inspection services which is appeared in the contract's attachment two.

The Article 4 of Confirmation Guidelines for Inspecting Companies and Goods Inspection Regulations

The article 4, clause D: Study of standard office's reports and reports by other supervision organizations about violation of regulations for inspecting companies when faults by inspecting companies are proved and warning them as notice, inspection certificate suspension with time limitation determination, limitation of activity range and geographical region for their inspection activities, and finally invalidation of qualification certificate according to guidelines for settlement of objections and struggles between purchasers and inspection companies (Mohammadzadeh, Guidelines for Confirmation of Inspecting Companies Qualification Certificate, 2010).

Non-Conformity of Customer Demand with Standard Requirements

A frequent question is that when there is conflict between demand of customer and standard requirements, what must be done? According to welding defect acceptance standard, for example, maximum acceptable nonalignment is 3 mm, but if customer demands a 2 mm nonalignment standard, then what? In these cases, it is stated in a clause of contract that about such kind of nonconformities, the customer's demanded standard has priority to the usual standard.

Damages from Inspection of Goods

Damages, generally, arose from inspection activities are divided into three kinds:

First: these are damages which inspectors or professionals are confronted with them because of inspection or tests. These damages may include measurement instruments and laboratory. Therefore, this group included health or material damages for inspector or inspecting company's instruments (Riyahi, Berooz; Identification of Damages from lack of Inspection and Probable Negligence from legal View, 2007).

Second: this group included such damages for inspected products which lower the value of products or products will be useless because of them. Tests are two kinds, destructive and nondestructive, therefore it is expected that products after nondestructive tests to be returned undamaged. Otherwise, probable defects will be considered as damages.

Third: third group included damages that about them inspections are improper. In this sense, these damages are from lack of proper inspections. In other words, customer will be aware of product unconformity after its clearance.

The Guidelines for Quality Penalties of Inspecting Company

If according SAPCO, it is a requirement that inspecting company to be present in the site of manufacturer for confirmation of product's quality, then the consequences of products' bad quality is upon inspecting company also. This means that the inspecting company is also liable about returned products which the manufacturer is responsible for them. This process defines how to determine the cash penalties that manufacturers and inspecting companies must pay according to mentioned policy. About all manufacturers that signed the general agreement and all inspecting companies that signed the inspection agreement, it is necessary to say that in the time of conflict between this guideline and signed contract, the contract's contents will be known as base for action (Examination of Guideline for Inspectin Company Penalty, No. I-ENG-056, page 2 of 10, Revision 2).

Inspector Job: Obligation in Solidary or Obligation in Solidum,

In contrast to some countries including France and common law, the employer's liability about damages arose from worker's harmful activity in relation to third parties in Iranian law isn't a responsibility without fault and isn't based on danger theory (Safa'i, 2004, 579). Therefore the responsibility of employer in the article 12 of the direct taxes law is based on the fault theory. Employer's fault is assumed by legislator and legislator has removed the burden of its proof from the shoulder of damaged person and it is assumed that employer didn't considered needed cautions in the time of accident. Obligation in solidary among creditors isn't appeared in the Iranian civil law, but about obligation in solidary among debtors there is some regulation in the extortion section. From the article 1197 to 1216 in French civil code, obligation in solidary is discussed. In Egyptian law obligation, the article 280 and 284 respectively discussed about obligation in solidary among creditors and debtors. In obligation in solidary among debtors its description as solidary means that each one of debtors is bound to pay the whole of debt when creditor comes to him, while he owes a part of debt and creditor can demand it from each of debtors as his decision (Katoozian, Naser; Civil Law, Legal Events, p. 182, No. 193, cited from Yazdanian). It is principle that there isn't an obligation in solidary in obligations unless according to law or contract this kind of obligation has been established between sides of an obligation. Therefore whether the source of such obligation is contract or law, obligation in solidary may be divided into two parts, contractual and legal (Katoozian, p. 196, No. 136), and here contractual solidary obligation will be discussed. Contractual solidary obligation: because such obligation isn't common as a rule, it is obvious that obligation per se isn't defined as a solidary one, unless such obligation has been produced by its parties. This rule or principle that obligation can be cancelled when there are several isn't an imperative rule, in fact parties can consider a clause in their contract as the term of obligation in solidary, then they can prevent obligation dissolution. Therefore sometimes productive will may produce solidary obligation. According to the article 1202 of French civil code, the article 279 of Egyptian civil code, and the clause 1 of the article 150 in Swiss civil code, contract can be the source of obligation in solidarity. Some believed that in solidary obligation among creditors only productive will through contract can assign the trait of solidary to the obligation. In Iranian law also, according to the article of 404 of the commercial law, contract can be the source of solidary obligation.

Civil Obligation in Solidum

But in some case the subject of obligation is one but the source for an obligation is multiple (for example when several separate acts were committed by several persons). The relations and the source of obligation in such assumption are multiple, but the obligation subject is one. In the other words, any debtor is bound to the whole of debt and without any solidary relation between obligators their debts are attached to each other's debts. In such liability the source of debt is also multiple and it is called as obligation in solidum not obligation in solidary (Yazdanian, Vol. 1, 2007, 382). Where several persons legally were liable to compensate damage, such liability may be an in solidum one in some cases. Even sometime two persons were liable about one damage , but one person because of contractual obligation violation and another one because of committing a fault while this later one hasn't

any contractual relation with whom that suffered damage, in such cases we can call their liability as obligation in solidum. So in the cases that there are two or more real wrongs (contractual or non-contractual) and in the same time these wrongs didn't compose a single source or the problem isn't as a problem with many causes rather any cause independently leads to damage then the liability is solidary one. But if third party clears one of them from debt this doesn't lead to discharging the other one, while about obligation in solidary when one of obligators to be discharged then all will be cleared from the debt. For example in a case that person to insure his civil liability for compensation of damage arose from an activity, when damage has occurred the person who suffered the damage has the right to demand his compensation from insurer and insured person while there is no solidary relation between them and here two liabilities are existed for compensation of one damage. In this case, if the suffered one goes to the insurer then insurance company can't go to insured one, but if the suffered one goes to insured one and to receive his compensation then he can demand from insurer what he has paid to the suffered one as compensation (Katoozian, Nasser; Civil law: Obligations, p. 227, No. 152, cited from Yazdanian, Alireza). But if damaged one has went to employer and has received his compensation then according to last part of the article 12 of direct taxes law "employer can go to the person who is damager if according to law to be liable." Therefore sometimes in a relation between obligators the compensation is distributed between them and isn't imposed only on one person and is some case this debt will be imposed only on real debtor who maybe it didn't committed any wrong and only is known as obligator to compensate damage because of law. For example insurance company is bound to pay compensation because of insurance premium which it has received.

The Inspectors' Liability from Damage to the Environment

There various definitions for the environment, but one of best and most comprehensive definitions is introduced by European Council in the clause 13 of the article in the civil liability convention for destructive environmental activities 1993 in which the environment is defined as follows: "the natural reservoirs, alive or not, including air, water, soil, animals, plants and reactions among similar agents and also properties which are a part of cultural heritage and are regarded as specific specifications of environment" (Poor Hashemi, Arghand; Dr. Seied Abbas, Dr. Bahreh, 2013, 129). And according to enacted act the article 129, 155, 188, 192 in the fifth Iranian development plan 2011-2015 have supervision over oil exploration, development, and production operations by companies about amount of production, reservoirs preservation, health and safety and environmental standards" (The Fifth Iranian Development Plant, Enacted Act, No. 419/73285, 2010).

The Polluter pays Principle

The polluter pays principle is one of strategic principles of the European Union about the environment and is appeared in the article 174 of European Union Association Agreement (Law Quarterly, Law and Political Sciences Faculty, Period 38, No. 2, Summer 2008, pp 285-313, Katoozian, Nasser; Ansari, Mehdi). According to the definition by European Union in 1974 the polluter is someone who directly and indirectly cases damage to the environment or someone who cause major damage to the environment. The civil liability convention against damages to the environment arose from hazardous acts (Lugano Convention) is an important source about civil liability for dangerous activities for the environment. And the base of this convention is the polluter pays principle. This principle only included pollution and is an instrument for the compensation of environmental pollutions but hasn't included environmental destructions because destruction hasn't international consequences and often its effects is limited to country's borders and this generally will happen within a country's sovereignty.

The Liable one for Compensation and Prevention of the Environmental Damages

Imitating Lugano convention, the European Commission in its act has placed this responsibility upon operator. The operator is a person who has control and supervision over an activity (European Commission, 2000, 19), and in the other words, the operator has direct control or the responsibility of daily management not an indirect control. Therefore the parent company isn't included (Bergkamp, 2000, 6). According to legislator's intent in European Union, the operator must be able to perform preventive and compensative attempts.

Inspection-Originated Disagreement Settlement Methods

The convention on contractual obligation regulations was arranged for first time in Rome in 1980. According to this, some standard international contracts and forms were devised which can be used also by governments, companies, and even real personalities. As a final conclusion it may be said that the best way for disagreement settlement in contracts is that all aspects were considered precisely in the time of contract signing and some ways to be predicted for settlement of probable disagreements (Hassani, Bid and Tender Newspaper, 2014). Adducing the article 23 of budget law the first general conditions of contracts were defined by the Plan and Budget Organization

in 1974 and were announced officially to all executive organization of the country. The disagreements between employer and contractor were settled in the country's legal courts (the article 53 of general terms of contractor). This was the case until 1999 in which the general terms were changed but a balance about parties' rights and obligations didn't happened in that important administrative document, in the other words, the employer's pan balance was heavier than contractor's about explanation and establishment of rights and obligations for both parties. Nevertheless the article 53 of the contract's general conditions for disagreement settlement, an important turn was happened for "arbitration" substitute (Esma'ili, Ebrahim; 2009, 37).

Authentic Jurisdiction for Dispute Settlement

According to the article 968 of the civil code, contracts about determination of authentic law for the settlements are faced with three options: 1- if the contract is between two Iranians, whether inside or outside, the authentic law system for judgment is Iranian law. 2- If the contract is between an Iranian and a foreigner one, if it is concluded inside then Iranian law is authentic and in force. 3- If the contract is between an Iranian and a foreigner, and it is concluded outside of the country, then regarding the contract the foreigner law is in force. There are some limitations about resolution of disputes between ministries and governmental companies with others. In such cases to choose an arbitrator isn't a solution unless it was accepted by cabinet and parliament to be informed. In this regard the court refers to its regulations for settlement of disagreements and will determine related ruling law, but there is another problem. This problem is that there are different rules for the settlement in any national legal system, so naturally the result from authentic jurisdiction is different in any different legal system. In another situation maybe the laws for dispute resolution to be similar in related countries, so at international level there is an attempt to make similar such laws. The convention on contractual obligation laws was hold in 1980 in Rome for first time (Zia'i Bigdeli, 2005, 86).

The Standard Contracts and In Force Laws

The standard contracts are pattern contract for international trade. It is common to use such contracts in international trade. Many commercial companies use standard contracts instead of unique contracts with each of their partners. The standard contracts included all needed items including parties' rights and obligations. Nevertheless these contracts are principally formed within a national law framework, so their legitimacy id dependent on the free will principle. Despite standard contracts and their general terms and conditions may be devised in an extensive way, but they can't be free from influence of laws which are in force on contracts. Thus standard contracts also must be written according to the in force laws (Shroodi, 1998, No. 1, 4, 7; p. 1-5).

The Guideline for Dispute Settlement in the Oil Industry Contracts

The guideline for settlement of disagreements in the contracts of oil industry was signed by Bijan Zanganeh as Iranian oil minister in 14 articles and 6 provisions. Adducing the part 6, the clause B of the article 3 about duties and authorities of the oil ministry enacted by Iranian Islamic parliament, 2012, this guideline is officially came in force aiming to supervision on good performance of contracts and as a method for settlement of disputes, avoiding long term disputes, and prevention of interruption and corruption in projects.

Article 1: the settlement commission will organize a contractual settlement commission in each main company (National Oil Company, Iranian National Gas Company, Iranian National Petrochemical Industries Company, Iranian National Refinery and Distribution of Oil Products).

Article 2: the duties of contractual settlement commission are treatment of disputes between the contract's parties and related main company and subsidiary companies, and also decision about settlement method.

Article 3: the high settlement commission is composed of five persons:

A: legal deputy of the parliament as commission's chief, B: the representative of the engineering deputy of the minister, C: three experts and manages familiar with financial, contracts, and project management who will be assigned by the minister (Article 3, The Duties and Authorities of the Settlement Commission, 2012).

The Alternative Methods for Dispute Settlement

The alternative dispute resolution methods (ADR) are methods that are substituted for judicial procedures and their aim is fast resolution of claims by persons. Despite of different kinds of these methods, all are based on mutual consent while their results often aren't binding. Arbitration, mediation, reconciliation, brief session, combined ADR and engineering contract dispute settlement methods are the most important methods. The advantages of these methods included inexpensiveness, fastness, confidentiality, flexibility, professional treatment. Some of qualities of these methods including non-bindingness and because some claims can't be referred to ADR, are their disadvantages. Despite the long history of the alternative methods in Iranian legal system and presence of some

regulations about arbitration and reconciliation, these methods weren't used by claimers (Moslehi, Ali Hossein; Sadeghi, Mohsen; 2004, 46).

The Compensation Methods for Inspection-Resulted Damages

Indemnifying for damages is one of most important aims of civil liability, and it appeals to many ways to do realize this aim. According to civil liability law all people, whether real or legal personalities, are responsible for damages which they have imposed on others, and they must indemnify these damages. The civil liability insurance is about compensation of damages which arose from faults, wrongs, and dangerous activities by insured one. According to the articles 312 and 319 of the civil code, to pay monetary equivalent of damaged properties is one of the usual ways to pay indemnifications, and if damaged property was a common one then its equal and otherwise its price may be paid. But this priority isn't observed in the civil liability law and in its article 3 about indemnify for damage it is appeared that "its amount, method, characteristics will be determined by the court according to circumstances of the case." Therefore although compelling the person who is damage-suffered to receive the monetary equivalent instead of a substitute isn't possible legally, but court's order to monetary payment for damage is a usual thing because money is an easier way for compensation that substitute, and damaged one agrees with it (Nazari, 2010, 191). The development of insurance industry, especially compulsory insurances and liability insurance is a way to cover all damages. Physical and financial damages are some damages that are covered by insurance in civil liability insurance. Because of frequent usage especially in oil and gas industries, they will be discussed in details in the next section. Some examples for damage compensation methods are: compensation for loss according to the contract, restoration, monetary equivalent compensation. According to three above methods, the monetary amount determined by court must be equal with suffered damage. The criterion for determination of compensation amount is needed amount that damaged one must pay for restore to former situation and compensation of whole loss (Katoozian, Nasser; 1994, Vol. 1, 537). It is stated about loss compensation in the article 3 of the direct taxes code that: 'the court will determine its amount, method, and characteristics according to the case's circumstances, and it can't be paid as stipend unless debtor make a proper guarantee about it or it is prescribed by law". Although according to civil code it isn't possible to force damaged one to receive the price instead of the substitute, but courts usually make decision to pay monetary equivalent because it is easier than providing a substitute and he also accepts this. And another legal rule which may guide court to make its decision about works that defendant must do to restore the situation to former conditions is stated by Lord Upjohns in a hearing: 1- we must be sure that there is an essential loss is happened, 2- fine payment can't indemnify sufficiently damages, 3- defendant's attempts are main cause of tort and loss happening (Novin, 2013, 450-455).

The Effect of Insurance Development on Damages from Industrial Facilities Ownership

Losers confronted with insurance companies and social security for compensation for their damages, and moral cautions against demanding damage compensation were eliminated, and so the number of claims of civil liability increased. Then judges have shown less hesitation to rule that loss must be indemnified, and despite the relation between damaged one and damager one they are trying to make a rule about compensation for all damages, whether material or immaterial ones. If defendant is insured has an important effect on the jury in British law, and its members usually try to decide in a way that defendants with civil liability insurance to be convicted (Babayi, 2011, 12). Even in some cases when needed conditions for civil liability weren't realized fully, insurance companies accept to settle such claims and will compensate for such damages because they want to preserve and to improve their reputation (Mash'ali, Seied Abdolhossein; 2013).

Liability Insurance for Industries and Facilities

Damage insurances or compensation insurances cover insured's properties against damages arose from different accidents and insurers pay for their compensation. Fulfillment of obligations by insurers is depended on damage happening to the subject of insurance (Karimi, 2000, 11). The liability insurance causes that application of civil liability to be considered as a method for distribution of losses. Distribution of losses through civil liability only is possible about accidental accidents and damages not about intentional ones because of preventive policy. The liability insurance is an insurance that covers insured's civil liability against third parties. Such insurance will pay a debt which is the consequence of damage happening to other one, and this debt must be undertaken by insured one (Babayi, 2011, 10-27). Therefore according to the contract of civil liability, insurer is known as responsible to compensate insured ones for their probable debt which will be placed upon them not to compensate third parties for their losses (Karimi, 2000, 169). Therefore the important role of insurance industry is elimination of inspectors' concerns in the companies which are members of inspecting companies' society. The civil liability insurance about third party is a kind of liability insurance that has high importance for inspectors. Such insurance is known as

professional liability insurance. After inspection of goods and evaluating that whether they have conformity with international and national standards, according to the activity field of the company, in the case of conformity its certificate will be issued, and when an unintentional fault by inspector has led to loss (mainly monetary ones) then liable insurance company will act its role (Ahmadi, 2012).

The Specifications of Insurance in Inspector's Insurance Policy

Effective changes in risk degree and possibility degree of an accident may lead to some effects and clauses in the insurance contract. For example after 11th September attacks in the USA a high increase about possibility of terrorist accidents in air transport industry was occurred which led to modifications in related contracts (Al-Hassani, 2002, 95-165). Among essential elements of insurance contract (risk, insurance fee and accident happening), risk has an essential and determinant role, since the calculation of the fee and insurance coverage (the subject of insurer's and insured's obligations) is dependent on existing risk for the subject of insurance.

The Risk of Insurance's Subject Matter

Risk is a probable event and a possibility that may be the origin of damage and is the chance for occurrence of an accident (Babayi, 2011, 59). So the concept of risk or danger is an event that may be happened soon or later and its occurrence chance is calculable. General risks such as war, flood, and earthquake -which if to be realized have extensive bad effects for many people- are adverse general risks but they are insurable (Karimi, 2000, 28-29). After knowing about risk escalation, according to the article 113 of French insurance law insurer is allowed to cancel insurance policy or to change its fee. In British law also there isn't considered a general task for insured one to inform about danger escalation for the subject matter of insurance and change in its situation (Babayi, 2011, 67-71).

Intentional Damage

Insurance coverage aims at a guarantee to compensate for damages from accidents and happenings, and its operations are based on statistics and probability rule. Therefore it is in opposition with insurance's logic to make coverage for intentional damages. According to the article 14 of the insurance law, "insurer isn't responsible for damages from insured's fault or its representatives." Definitely unintentional damages resulting from insured one's fault and wrong is a main risk in insurance's subject matter that must be covered and mainly liability insurance is formed for coverage of such risks and usually insured's responsibility is from its fault and wrong, and different forms of liability insurance are about insured's fault and wrong or its representatives. Insurance coverage in British law is an essential principle and from long time ago frequently this was emphasized and confirmed by courts about different kinds of insurance (Babyi, 2011, 88). The main aim of the subrogation principle which is the natural result of indemnify principle is also that insured one not be able to receive compensation from two sources. Therefore according to the British employer's liability law 1969 when an employer must indemnify its employee for damages in the working time, if damages arose from equipment's defect, profit acquisition from an unpleasant accident is unfair and unacceptable. Employer can claim against manufacturer and vendor of such equipment to recovery such damages (Paul, Trans. By Risseh, 2002, 192 onward). Usually damage isn't separable from others, for example it is the case in a claim in 1973. The damage in this case was produced partly by defected equipment which was introduced by the insured and partly because of fault by insured's employees in the time of installation. Insured party had general liability policy in which product liability was excluded, since it was impossible to make distinction between damages from two causes, so insurers weren't responsible to indemnify insured one for suffered lose, because a part of it was arisen from an excluded risk (Wayne Tank & Pump C, Employers Liability Assurance Corporation, 1973). So if four following items were realized the loss will be proved for insurer and will pay compensation: 1- the insured risk was happened, 2- the loss is suffered because of insured risk, 3- the loss is arisen directly from the insured risk, 4- the loser's properties are exactly that properties which were insured by insurer (insured one must introduce a list of its damaged properties and approximate amount of damage in the time of damage declaration to insurer) (Hampad Insurance Company, 2010).

Conclusion

The liability, according to Iranian law, arose from inspector's professional duties about inspection and objects under his supervision, is based on his fault in the time of job doing, and the one whom is suffered loss must prove it. But easy compensations and support the suffered one without proving the fault is an increasing trend in modern and industrial countries. Some torts in British law are under the title of pure liability and about such torts there is no need that plaintiff to demonstrate defendant's fault, therefore court procedure in many countries including Britain is moving towards support the suffered one according to the liability without fault and pure liability. In the fourth section of third chapter and in the articles 1146 onward in the French civil code, the contractual liability is under

obligations' effects and according to the common theory the contractual liability is an effect of mutual obligation between parties in the contract and its violation will lead to liability. And according to the articles 11 and 12 of the civil liability code about the liability of employer and its employees and the fault-originated liability of government's employees when they are responsible for maintenance and exploiting public and governmental industrial facilities, we can consider a common and proxy liability in which employer's or government's liability isn't absolute, and if it was possible to prove that employer or government isn't at fault then it isn't considered as liable. The subjects of inspection-originated liability are often contractual obligations which contract is their origin and but sometimes find a non-contractual origin also. About causes that may remove the inspector's liability it can be said that if the loss is happened because of external things in a way that external agent is the only cause of loss, then the absolute cause of loss is an external thing, so it isn't possible to consider the loss as inspector's fault and finally there is no liability against inspector whether the agent is a coercive one or the act of third party or suffered one itself. If external thing is only one of cause for the loss then about act of third party or suffered one it can be said that there is a situation with several causes and if the loss may be considered usually as the result of human cause in a way that if this cause wasn't existed the loss can't be happened and then the coercive cause is ineffective in loss making, then in this case the coercive cause hasn't any role in this regard and human cause is responsible for loss compensation, and also it must be said that there is no different between real and legal personality about the liability arose from harmful act and it is possible that the obligation in solidary and obligation in solidum to be regarded. About damages against the environment and the method for its compensation, according to the environmental, international and national law this is on the polluter. There are methods for dispute resolution among the contract's parties by the resolution commission in inspectional contracts. Considering who are the contract's parties the commission may use decrees by related courts, arbitration, and mutual consent to resolve the case. Provided that the loss isn't intentional, the professional liability insurance will indemnify suffered on for the loss. And now more and more, individual liability and personal compensation have turned into a sort of collective compensation method in Britain. Aiming to realize this purpose, some compensation systems- like as social security- were organized, and governments are participating in the compensation of damages from traffic, atomic or dangerous activities, chemical materials and industrial facilities. Spreading of compulsory liability insurances is a certain way to compensate suffered on for losses.

REFERENCES

1- Esma'il Harisi, Ibrahim; the Legal Foundations of Contract, Tehran, Jangal Javdaneh Publication, Tehran, 2009.
2- Amiri Gha'em Maghami, Abdolmajid, The law of Obligations: The Legal Events, Vol. 1, first print, Mizan Publication, Tehran, 1999.
3- Ahmadi, Alireza; The Significance of Insurance in Inspection Profession, The Iranian society of Audit and Inspection, 2012.
4- Badini, Hasan; The Philosophy of the Civil Liability, first print, Enteshar Publication, 2005.
5- Babayi, Iraj; The law of Insurance, tenth print, second edition, SAMT Publication, 2011.
6- Bojnoordi, Mohammad Hasan; Al-Ghava'ed Al-Faqih, Esma'ilian Publication, Qum, 1992.
7- Pour Hashemi, Arghand; Seied Abas, Bahareh; The International Law of the Environment, Dadgostar Publication, 2013.
8- Paul, Allen; The Insurance of Liability, Trans. By Re'iseh, Ali Akbar; first print, The Research Center of Insurance, 2002.
9- Ja'fari Langeroodi, Mohammad Ja'far; The Law of Obligations, Vol. 1, third print, Tehran University Publication, 2003.
10- Hasani, Alirezar; The Methods of Dispute Resolution in Contracting Contracts, Bid and Tender Newspaper, 2013.
11- Doroodian, Hasanali; The Civil Code Pamphlet 4, The law Faculty of Tehran University, 2009.
12- Darabpoor, Sohrab; General Principles of the Civil Liability in British legal System, Legal Opinions Quarterly, No. 40, 44, and 45, 2011.
13- Rene, David; British Law, Trans. By Saljooghi, Mohammad; first print, Mizan Publication, Tehran, 2007.
14- Riahi, Behrooz; The Legal Aspect of Identification of Losses from Lack of Technical Inspection and Probable Negligence, First International Conference of Technical Inspection and Nondestructive Test, 2007.

15- Shrovi, Abdolhossein; The Role of Uncitral in the Development of International Trade Law, Ava-e-Edalat Publication, 2008.
16- Hampad Insurance Company, Insurance Frequent Questions, 2010.
17- Safa'I, Seied Hasan; Civil Law, Vol. 1 and 2, second print, Mizan Publication, Tehran, 2004.
18- Ziya'i Bigdeli, Mohammadreza; General Trade Law, Ganj-eDanesh Publication, Tehran, 2005.
19- 'Ashoori, Mehdi; The Conflicts between Iranian and French Law, first print, Imam Sadegh University, 2010.
20- Farshadfar, Mohammadali; The Guidance for Contract Conclusion for EPC Projects, second print, Noavar Publication, 2013.
21- Katoozian, Nasser; Civil Law: Legal Acts (Contract, Onesided Disposition), second print, Enteshar Publication, 1992.
22- Katoozian, Nasser; Obligations outside of Contract, Vol. 1, Tehran University, 1995.
23- Kiani, Majid; Sho'oori Andrabi, Mohammad; Hemati Sha'bani, Ali; The Specifications and Usage Application of Design and Build Method with attention to Nossod Tunnel Project, Second International Project Management.
24- Mo'in, Mohammad; Persian Dictionary, Vol. 3, eighth print, Amir Kabir Publication, 1992.
25- Mohammadzadeh, Abas; Guideline for Affirmation of Inspecting Companies' Qualification and Regulations for Inspection of Goods, No. 40863/223079, Iranian Parliament Legal Deputy Publication, 2010.
26- Moslehi, Ali Hossein; Sadeghi, Mohsen; A View at Alternative Methods of Dispute Resolution, The Research center for Human Sciences and Cultural materials, code: 262938, 2004.
27- Mash'ali, Seied Abdolhossein, A Treatise on Civil Liability arose from Oil and Gas Industrial Facilities Ownership: A Comparative Study of Iranian and British law, 2013.
28- Nazari, Irandokht; Owner's Liability, first print, Javdaneh Jangal Publication, Tehran, 2010.
29- Yazdanian, Alireza; General Rules of Civil Liability, Vol. 1, first print, Mizan Publication, 2007.
30- Yazdanian, Alireza; The Realm of Civil Liability, Vol. 1, first print, Aylar Publication, Tehran, 2000.
31- Al-Sanhoori, Al-Vasit; Manshoorat Al-Jeli Al-Hoghoghiyah, Vol. 2, third print, Beirut, 1998.

Websites:

Sabyati, Ali, Turnkey, EP, and EPC Contracts, 2011:
http://rahandazi.mihanblog.com/post/author/157683/page/4
Bekhrad International Inspecting Company, 2011, Contract Terms:
http://bekhrad.com/Persian/Default.aspx?ID=1017