



A Comparative Study of Educational Contracts: An Analysis of an Effective and Creative Unilateral Will in Iran and French Law

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ARTICLE INFO	ABSTRACT
<p>Received: 09 December 2020 Revised: 15 February 2021 Accepted: 22 February 2021 Online: 20 September 2021</p>	<p>Due to the shortage of manpower, many non-governmental schools in Iran have been forced to enter into educational contracts with various individuals - as temporary workers. While contracts are mostly short-lived, many employers take advantage of employees' effective and creative unilateral will by setting imposed terms. Given the importance of this issue from a legal perspective, the purpose of study is a comparative study of educational contracts with regard to the role of effective and creative unilateral will of one of the parties to the contract in the legal system of Iran and France. The method of the present study is qualitatively comparative and the documentary method was used to collect data . Findings show that in both legal systems, the creative and effective will of the parties to the contract is acceptable. Also, in France, this will is subject to the contract and consent, while in Iran, the contract is sufficient for a judge to vote. Another finding of the research reveals that when there is a dispute between the parties to the contract, in both countries, the main emphasis of the judge is to make a decision to refer to the inner will of the individual. However, in France, the obligor has the right to cancel unilateral obligations based on his creative and effective will during the term of the contract, while in the Iran's legal system this is not possible. According these findings, it seems that the Iran legal system mainly votes in favor of educational employers. Therefore, it is suggested that the Iranian legislators - according to the economic conditions of the society and experiences of the French legal system - to amend the laws related to unilateral obligations in relationship between the employer and the educational staff.</p>
<p>KEYWORDS</p> <p>Creative Will Educational Contract Satisfaction Temporary Employment Unilateral Commitments</p>	

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1. Introduction

Iran's educational system has been plagued by a number of issues over the past four decades, influenced by demographic policies, political crises and economic challenges. One of the problems is the lack of manpower in various training and organizational sectors of schools. In fact, after the victory of the Islamic Revolution in 1979 and with the change of population policies, increasing the birth rate to 3.5 percent caused a shortage of manpower in various educational stages (Heidari, Zanjani & Sarukhani, 2015). To address this shortcoming, various policies such as the establishment of teacher training centers, the use of contract staff and increasing the working hours of teachers were adopted (Safi 2002). Although these policies eased some of the pressures and led to the employment of thousands by the Ministry of Education, the need for manpower was never fully met. Now, thirty years later, the Iran education system is facing a new wave of teacher retirement. According to Deputy Minister of Legal and Parliamentary Affairs of the Ministry of Education, Ahmadi Lashkai (2020), 640,000 teachers will be retiring by the end of 2025. This number means the exit of almost two thirds of teachers from the educational system, while according to the population and housing census, Iran will again face the trend of population growth and increase in student population by 2022 (Fathi, 2020). Thus, to solve this problem, there is a need to hire 40,000 new teachers annually (Hashemi, 2019). Also, Director General of Administration and Organization of the Ministry of Education Hossein Bar (2019) announced that the shortage of teachers for the academic year 2020-2019 was about 108 thousand people. To address this need, methods such as the rapid employment of Teacher Education University graduates, the increase in teaching hours paying tuition fees to available teachers, use of free labor, and the employment of retired teachers were used.

Thus, during these years, Iran's schools have used some people as teachers who have the following characteristics: a) Bachelor's degree in a scientific field, b) Failure to pass the teacher training course in its various forms (one-year / Biennial / four-year courses); c) Temporary employment contracts (contracts of less than 3 or 9 months); d) Lack of legal obligation of the employer to permanently employ temporary employees; and e) Receiving low salaries than the amount approved by law and not receiving items such as pensions, insurance premiums, bonuses and annual salary increase (Rezaei, 2018). Of course, these conditions do not indicate a stable employment situation, and for this reason in recent years we have witnessed two social / educational and legal events: First, the increase in disputes between temporary staff and school

founders and principals (worker and employer) and second, the accumulation of contracted staff in front of the Ministry of Education, Islamic Parliament, Ministry of Labor and other legal and executive institutions to protest against working conditions (Hazare Moghaddam, 2020). One of the consequences of both events is the issuance of different verdicts by different authorities such as the Ministry of Labor, courts, different sections of the Ministry of Education and other organizations and ministries for or against the temporary staff of schools. It is obvious that there are various legal reasons and documents for this difference of opinion.

Among these legal documents, we can mention the role of generative power of contract employees in creating and accepting unilateral obligations. In fact, the main issue is that some employers, in order to prevent complaints from temporary employees - for cases such as low salaries, non-payment of insurance premiums by the employer, non-renewal of contracts, etc. - in the text of the contract or separately impose unilateral obligations to them. These conditions are apparently accepted by the temporary employee with consent and deprive her/him of the right to file any complaint against the employer. These are commonly referred to as "ancillary contracts" or "collective agreements" - in which a party to a contract imposes conditions on the weaker party of the contract by its unilateral will. These contracts refer to obligations that appear to be based on the individual's will and are examined under the heading of "indefinite agreement". For example, some of the seemingly legal obligations that an employee unilaterally accepts based on his or her effective and creative will include obtaining a signature from the contract employee to express full satisfaction with the terms of the contract, obtaining a letter of consent for receiving full pay and benefits, insurance, years of service and retirement, and obtaining checks and promissory notes with high amounts in the employer (Tajik 2020).

All of this happens when a temporary worker has no choice but to get a job. An interesting point in this regard is that in Iran, the Ministry of Labor and Social Affairs is the authority to handle disputes between workers and employers, while complaints related to the will based on the acceptance of unilateral obligations are the responsibility of the courts (Ministry of Labor and Social Affairs, 1990; Bigdeli 2012). In this situation, the question arises as to whether, in principle, a position can be given to the extent of creating commitments for unilateral will. Since the Iran legal system has historically emulated the French legal system, the main purpose of this study is to comparatively study educational contracts with respect to the effective and creative unilateral will in Iran and French law. To achieve this goal, the following questions are considered:

- What is the view of the Iran legal system on effective and creative unilateral will in educational contracts?
- What is the view of the French legal system on the effective and creative unilateral will in educational contracts?
- What are the similarities between the Iran and France legal systems regarding effective and creative unilateral will?
- What are the differences between the Iran and France legal systems regarding effective and creative unilateral will?

According to main goal of research, the research questions focus mainly on the scope of the power of unilateral will, whether such a will can have an independent place as a source of obligations or not. In the next section, the theoretical foundations and the most important findings of previous researches are briefly mentioned.

2. Theoretical foundations and research literature

Legal action in any sense is a creation of the human will. Commitment in jurisprudence is basically either the result of the agreement of individuals (legal acts) or arises from events that lead to a commitment by the legislator (legal events) (Shahidi 2003). The fact that a person can voluntarily create a binding obligation for herself/himself or another, from the point of view of some jurists is unjustifiable and from opinion of others is exceptional (Bigdeli 2012). The theory of unilateral will was expressed by German and Austrian jurists in the second half of the nineteenth century. They believed that a will could put its agent in a position to make obligations to her/him. Thus, a group of jurists emphasize the internal aspect and a group emphasizes the external aspect of the will (Sehat, Rezapour & Ghiyasi, 2019). The inner aspect refers to the fact that individuals cannot owe others by their own will, but by their own free will are able to accept obligations (Walidi 1985). If the will finds an external aspect and can be discovered by causes, legal effects can be considered on it. Also, since the core of effective and creative unilateral will is the acceptance of commitment, the personal aspect of commitment in turn implies that some legal acts can arise unilaterally and the relationship itself (Yazdanian, Tabatabai, Nemati, & Parnian-e-Joi, 2012).

It should also be noted that there is a major difference between a unilateral will and a contract. If a contract is concluded and there is ambiguity about the obligations of the parties (related requirements and other issues), the court will interpret the contract, custom and law. However, there is no such wide possibility regarding unilateral will, and if the declaration of will is

not clear and specific, it cannot create legal effects (Mousavi, Mousavi, Vakili Moghaddam & Gholami, 2012). Therefore, only if the will, in the position of declaration, contains all its elements and details, can it also produce its binding power. So in this context, interpretation is limited. Of course, the point here is that if the basis of unilateral will is imposed on the individual and is also mentioned in the contract, how it can be annulled. However, the position of legal systems is different from the theory of creative will in creating obligations. Some countries, such as Germany, only pay attention to the external aspect of the will, while in some legal systems; the internal aspect of the will has been accepted by the legislature (Nikbakht 2005).

According to the brief theoretical framework that was presented, we can briefly refer to the numerous researches that have been done on employment contracts and its various dimensions. For example, the British Ministry of Education has prepared a document for the salaries of school teachers and a guide to payment and conditions for school teachers. In addition to permanent teachers, this document also discusses the benefits and rights of contract teachers. The ministry also prepared a fairly comprehensive report on how teachers are hired and the content of contracts, along with legal advice for school principals (UK Department of Education, 2018). Ravan (2017) analyzes recent amendments to the French contract law and assesses whether the new regulations have achieved their stated goal of accessing, anticipating and influencing French contract laws in commercial attractiveness. Wegnauer (2007) refers to the different approaches of England to French and German law by applying some aspects of contract interpretation. Philippe (2005) emphasizes the role of free will by examining the French and American approaches to the formation and implementation of agreements. However, in French law, the element of satisfaction is given more attention. Khodadadi and Kohanestani (2020) with a comparative analysis of the effect of exchange and conventional trust in the type of contractual obligations in Iranian and British law believe that the acceptance of exchange views and conventional trust in Iran's law will create a new basis for necessity. Al-Humil (2013) has compared the legal system of Saudi Arabia and the United Kingdom with regard to the laws of Sharia.

In Iran, Nouri Youshanloui & Shahin (2015), examining the recent amendments to the law of new French contracts, believe that these laws - influenced by European law-, have increased the role of unilateral obligations. Ghaffarian & Sasani Korabasloo (2015) examined the violations of education staff in Iran, the United Kingdom and the Republic of Azerbaijan in accordance with the law. Rostami & Ghobadi (2015) believe that due to the expansion of temporary employment

contracts and the risk of non-renewal of these contracts at the end of the specified period, the principle of permanent employment contracts and fair distribution of job security has been violated in Iran. Mobin Vamiri (2017) points out that the concept of ownership under the new contracts has become broader than in the past. Akbari Feyzabadi, Turki & Naji Zavareh (2016) by comparative study of public interest in Iranian and British law, emphasize that in the UK, public interest is more related to individual rights and freedoms. Mujtahid Soleimani & Gheshlagh (2016) believe that there are ambiguities regarding unilateral obligations in Iran law due to the lack of reference to them by jurists and legislators. Mousavi Bojnourdi & Malihi (2015) believe that in Iran's law, like in France, the principle is that the internal will is the constructor of legal action, and in case of conflict between the apparent will and the internal will, the internal will prevails. Taheri (2014) by comparative assessment of the reasons and procedures for dismissal of a worker in accordance with the standards of the International Labor Organization and Iran's labor law found that the employer has been authorized to include the condition of termination in the employment contract so that he can unilaterally cancel it.

Molaei, Zarei, Rasekh, Jalali Janab & Yavari (2013) by comparative study of the foundations, nature and principles of administrative contracts in the legal systems of France, England and Iran found that from the point of view of bureaucrats, the main obstacle to promoting administrative contracts in Iran is the judiciary. Zarei & Molaei (2013) through pathology of the characteristics of Iran's administrative contract in comparison with French and British law found that the Iran's legal system faces serious obstacles such as lack of specialized courts and lack of coordination between different parts of the judiciary. Mousavi, Mousavi, Vakili Moghaddam & Gholami (2012) emphasize that the complexity of trade and legal relations in the new world has made it impossible to predict all aspects of the relationship in many contracts. Bigdeli & Maliki, (2012) have studied the position of apparent and internal will in jurisprudence and law and found that Iranian jurists have based the principle on internal will.

According to the research literature, three points can be inferred: First, the study of unilateral obligations and the role of creative will in contracts has been somewhat considered by lawyers and researchers, although this attention has not been mainly comparative. The second point is that the attention of lawyers is mainly on the creative and effective will in contracts related to the ownership, purchase and sale of goods and commercial-administrative contracts, while educational contracts have received less attention. The third point emphasizes that previous research has

focused on the creative role of permanent contracts, and that temporary contracts have not received much attention. Accordingly, the novelty of the present study is that researchers have a comparative look at the role of creative and effective will in the founder / manager relationship with employees with temporary employment contracts in the field of education.

3. Research Method

The present study from a comparative perspective seeks to examine educational contracts with respect to the role of effective and creative unilateral will in Iranian and French law. The method of selecting the studied countries is based on purposeful sampling and the method of data collection is documentary using secondary sources such as academic dissertations, articles, legal and educational databases. Content analysis method was used to analyze the data.

4. Findings

In this section, according to the first historical precedence, the role of creative and effective will in unilateral obligations in the French legal system is examined and described. The second part provides an overview of the legal system of the Islamic Republic of Iran with regard to the role of creative will. The third section deals with the comparison of two legal systems.

First: France

In French law in the late 18th and early 19th centuries, contract law was based on the principle of the rule of will, and the fundamental question that arose was why contracts were binding on those who concluded them. In answer to this question, Article 1134 of the French Civil Code argued that the influence and validity of contracts is due to the will of individuals. But the main question is whether a will can unilaterally create a commitment for itself. This question gradually became one of the concerns of professors of "Law of Obligations" because there was no provision for unilateral commitment in French civil law (Yazdanian 2020). However, persuasion as a source of commitment in most legal systems has caused controversy among legal professionals because some have rejected it and some accepted it (Cedric 2011). There was a controversy in France as well, but in 2016 a section entitled "Sources of Obligations" was created, stating that the application of laws, including unilateral obligation could be a source of commitment.

In fact, according to Article 1106 of 2016, a unilateral contract is a contract in which one or more persons make an obligation to other persons, without the other party having an obligation. According to a classical idea, the unilateral will does not have the power to create an obligation, but according to the new view, a unilateral will can create an obligation on the declarant (Yazdanian 2020). In other words, almost everyone agrees that a person's will cannot create commitment and demand for others, but whether a person's unilateral will can create a commitment for him in a way that people later want to fulfill that commitment. On the one hand, in line with the principle of free will, a person must be able to commit herself/himself. Therefore, if a will has the power to be able to commit itself, it must also have this will and ability to free itself from the shackles of obligation. In this case, unilateral commitment contradicts the essence of the obligation in the commitment. Contrary to this argument, some believe that each person's freedom is enough to commit or not to commit, but she/he does not have the freedom to commit and then release from bondage.

Therefore, when a person freely commits herself/himself, she/he must abide by her/his commitment and loses his freedom cannot get rid of the bondage of commitment (Katozian, 1993). Based on this, a type of balance and coordination between the wills is created. Also, in the French legal system, instead of the two elements of intention and consent, only consent is considered necessary for concluding a contract. In legal sources, the word satisfaction is interpreted as synonymous with will, which includes concepts such as internal will, apparent will, and defects of satisfaction such as reluctance and contempt. In addition, in this system, the creation of any contract requires the agreement of both parties, and therefore the meaning of satisfaction is based on the agreement of the will of both parties to the transaction. Therefore, the word consent in paragraph 1 of Article 1108 of the French Civil Code implies the existence of three elements of internal will, declaration of will, and agreement of wills (Mousavi Bojnourdi & Malihi, 2015). Another point that has been considered in the French legal system is the relationship between the internal will and the apparent will. According to this system, legal action is the result of the internal will and the inner will over the apparent will of the government. Therefore, in case of a dispute between the two parties to the transaction, one should try to identify the internal will that is the main element of legal action.

Thus, in Article 1156, the French legislature has obliged the judge to seek the real will of the parties to the contract (Mousavi Bojnourdi & Malihi, 2015). Of course, French jurists are divided into proponents and opponents of the role of internal will. Although the French legal system now

accepts the internal will, it urges investigators to pay attention to fairness and good faith in the process of discovering the truth. In other words, in the nineteenth century, French legislators did not doubt the preference of the internal will, and only some of them said that in the face of the explicit terms of the contract, it is not necessary to pay attention to the internal will (Samankan, 2014). Most of these jurists considered the distinction between explicit and ambiguous conditions to be a function of the real will of both parties and believed that the internal will took precedence over the declaration of individuals, but this idea has been criticized since the twentieth century. Nevertheless, attention to the internal will in the French legal system is still the basis of the legislator's action and his interpretation (Katouzian 2009).

In 2016, the French Civil Code on the Law of Contracts was completely amended. The goals of these reforms were to increase legal certainty about unilateral promises in the agreements. Nowadays, civil law considers a unilateral obligation to be a contract under which one party (the pledger) grants the other (the beneficiary) the right to choose to enter into a contract whose basic elements have been determined, and only the consent of the beneficiary is required to form it (Civil Code Article 1124, paragraph 1). According to this law, if the beneficiary has not used the option in the agreed period, it is not possible to fulfill the obligatory promise, because the promise will be lost. The law now provides that the revocation of its promise by the promisor during the time left to the beneficiary to opt does not prevent the formation of the promised contract (Civil Code Article 1124, paragraph 2). Previously, the French Supreme Court allowed the pledgee to cancel his promise during the term of office, without the beneficiary being able to request the enforcement of the contract; the beneficiary can only pay lose (Lafourcade, 2019).

Second: Iran

In the Iran's legal system (Articles 1306, 1307, 1310, 1311) of the Civil Code, although there are examples of unilateral obligations, it is not possible to find articles that are explicitly dedicated to this discussion, like the French Civil Code. In the definition of uniform obligations, it is said that "It is an obligation that is created only by a written will and in other words, the intention and liberation of one party creates it for the benefit of another" (Amiri Ghaem Maghami, 2006: 69). In Imami jurisprudence, most jurists have examined independent obligations in the form of basic conditions (Daraei, 2014). For example, Sheikh Ansari (1764-1881) stated that "The initial condition is the requirements that are not mentioned in any contract (either before or after the

contract) or are essentially written independently. Side like vows, covenants and promises are also among these conditions” (Sheikh Ansari, 1994, 55). Also, unilateral obligations such as vows, covenants and promises are among these conditions. There is a difference of opinion among Shiite jurists regarding the initial condition and the consequent unilateral obligations. Most jurists, such as Sheikh Ansari, do not consider it necessary to fulfill it, and some, such as Mullah Ahmad Naraqī (1716-1795), consider it necessary to fulfill (Naraghi, 1996). However, some jurists have said that because unilateral commitment is gratuitous, they should be considered permissible (Mirza Naeini, 1979). There is also a strong disagreement among lawyers on whether or not to accept unilateral obligations. For example, it has been said that no one can create an obligation in her/his favor without the consent of another, because creating an obligation requires interfering in the property of the party and creating a right for her/him (Emami, 1998; Fallah, Jamshidi & Dehghani Dehaj 2013). The principle of freedom of contract is enshrined in Iran’s law in Article 10 of the Civil Code, which stipulates that private contracts are binding on those who have entered into them, unless they are expressly contrary to the law. In general, the principle of freedom of will mentioned in Article 10 of the Civil Code has four important effects:

- The parties are free to determine the terms and effects of the contract;
- The effect of the contract is limited to those who were present in the contract (except for the subject of the obligation in favor of a third party);
- The contract is concluded by agreement of the parties and does not require special formalities, as is the case in some specific contracts;
- The parties to the contract are required to comply with the provisions of the contract (Parvin & Akbari Rudpashti, 2013).

According to the word “contract” in the text of this article, it may be said that this article does not include unilateral obligations, but since the criterion of Article 10 is respect for the will of individuals, its criterion also includes unilateral obligations (Jafari Langroudi, 1990). On the other hand, Islam approves all transactions that individuals rationally enter into to meet their needs, except what is explicitly forbidden. Therefore, it can be said that the principle of unilateral commitment is free of problems (Jafari Langroudi, 1990). Therefore, if at any time and place, people, based on unilateral obligations such as the basic condition, regulate their legal relations, there is no reason for its invalidity (Daraei, 2014).

Third: Comparison

From the analysis of the data, several cases can be inferred about the French legal system: The first point is that the jurists of this system during the last two centuries have expressed different views on accepting or not accepting unilateral obligations and free, effective and creative will of the parties. The second point is that French jurists have not followed a single lexical procedure and have used various terms such as contract, conclude a contract, forgery, commitment in favor of a third party, conciliation, unilateral commitment, mutual commitment, internal will, and apparent will. Therefore, according to the meaning of each of these words, they have examined and criticized the role of creative and effective will. The third point is the simultaneous emphasis of the French legal system on theories of individual liberty and social contract to confirm or deny the role of creative and effective will in contracts. The fourth issue is the emphasis of the French legal system on the internal will and its preference on the apparent will in times of disagreement between the parties. The fifth point is to accept the role of factors such as fairness and good faith in resolving disputes between the parties to the contract to determine the task of creative and effective will. The sixth issue is the emphasis of French law on the fact that in unilateral obligations, the obligee can cancel her/his obligations at any time.

Similarly, the analysis of the Iran legal system reveals several points: First that this legal system has historically modeled on the French legal system, although this borrowing has been declining since the victory of the Islamic Revolution in the late 1970s. The second point is that the Iran legal system in the process of reviewing and approving laws is strongly influenced by Imami jurisprudence. Thus, although Imami jurisprudence accepts the unilateral obligations and creative and effective will of individuals in the contract, some Shiite jurists consider it necessary to adhere to the obligation and some of them do not consider it necessary to fulfill. The third point is that the Iran legal system, based on following Islamic principles, emphasizes the complete freedom of concluding various types of contracts, as well as the freedom of the parties to the transaction to determine the provisions of the contracts. The last point is that in this legal system, a distinction is made between consent and contract, and the existence of each period in concluding a contract is necessary. With regard to these points, we can now refer to the main components of the two legal systems of France and Iran (Table 1).

Table 1: Effective components in the legal system of France and Iran focused on the role of creative will

Country/Component	France	Iran
The historical position	Pioneer	Follower
Theoretical basis	individual freedoms and Social contract	Imami jurisprudence
State of creative and effective will	Acceptable	Acceptable
Variety of legal terms	Medium	More
Condition of the contract	Consent and the contract	Contract
Conceptual diversity	Internal & Appearance	Internal & Appearance
Main emphasis for decision making	Inner Will	Apparent will
Interference of intermediate variables	Fairness and good intentions	-----
Authority range	During the contract	Unchangeable
attention to contextual conditions	Yes	No

According to the above table, the French legal system has a historical precedence in terms of the role of will in the contract, although Imami jurisprudence has long emphasized the role of obligations in transactions. Also, the theoretical foundations for explaining the affirmation or rejection of effective and creative will in the French legal system are rooted in the ideology of liberalism, while the Iran legal system is mainly influenced by Shiite jurisprudence, although it does not consider itself needless to pay attention to the principles governing social contract. Accordingly, in both legal systems, the creative and effective will of the parties to the transaction is accepted. Another point that should be noted is the multiplicity of situations related to the role of creative will, which has caused in each legal system several words such as contract, agreement, transaction, consent, etc. and with emphasize on their separation from each other.

In the meantime, the Iran legal system, influenced by Imami jurisprudence, has used more legal terms and is considering more alternative options in the relationship between the two parties to the transaction. There is a difference between the France and Iran legal system regarding to

"contract condition", so that in France, an effective and creative will depends on the occurrence of a contract and consent, while in Iran, a contract is sufficient for a judge to rule. In terms of conceptual diversity, both systems have accepted that the will of the individual in the transaction has two aspects: Internal will and apparent will, while in France the main emphasis on the judge's decision is the internal will - when there is a dispute between the parties to the transaction. Another point that should be added is that in the French legal system, in addition to the internal will, the role of fairness and good faith has also been considered, while the Iranian legislator has not paid attention to these two variables. Another issue that can be deduced from Table 1 is the extent of the individual's discretion in unilateral obligations in both legal systems. In France, the obligor has the right to cancel unilateral obligations based on her/his effective will during the term of the contract, while in Iran legal system this is not possible. The last point is attention to the contextual conditions that force the person to accept unilateral obligations. Contextual conditions refer to the economic situation in terms of such things as unemployment, inflation and recession. In an unfavorable economic situation where the unemployment rate is high, one of the ways to get and keep a job is to accept unilateral commitments by job seekers. Under these circumstances, the individual apparently accepts unilateral commitments with her/his effective and creative will. The French legal system seems to have given the obligee some opportunity to maneuver to cancel unilateral obligations, while the Iran legal system has not paid much attention to contextual conditions. With regard to these points, the similarities and differences between the two countries are presented in Table 2.

Table 2. Similarities and differences between France and Iran legal systems focused on role of creative will

Country/Component	France	Iran
The historical position	*	√
Theoretical basis	*	√
State of creative and effective will	*	*
Variety of legal terms	*	√
Condition of the contract	*	√
Conceptual diversity	*	*
Main emphasis for decision making	*	√
Interference of intermediate variables	*	√
Authority range	*	√
Attention to contextual conditions	*	√

As Table 2 indicates among the ten components related to the role of creative and effective will in contracts, there are similarities in only two components between the legal systems of the two selected countries. The first similarity shows that in both legal systems, the creative and

effective will of the parties to the transaction is acceptable. The second similarity refers to conceptual diversity, meaning that the jurists of both countries have considered the effective and creative will from different angles and determined its effective boundaries and territory. The content of Table 8 also shows the differences between the two legal systems. Naturally, some of these differences are not very deep and refer only to historical facts or theoretical foundations while things like the role of internal will or ability of the obligee to cancel obligations point to fundamental differences between the two systems. Given this brief comparison, it is now possible to consider the status of the two legal systems in relation to educational contracts.

The analysis of the above data shows that in both countries, the temporary employees of schools have been given the right to use their creative and effective will in the process of concluding a job contract and to accept unilateral commitments in favor of the employer in order to get job. There is also a fundamental difference between the two countries that in France lawyers pay attention to both consent and contract in the process of drafting educational contracts, while in Iran only the existence of a contract without consent is enough to vote for or against temporary staff of schools. As mentioned earlier, Iran's economic situation and high unemployment rate have helped to make contract acceptance (without consent) largely to the detriment of temporary employees and to the benefit of the employer. Another important difference between the two regimes is the French legislator's main emphasis on the role of internal will in unilateral obligations, while the Iran legal system mainly provides space for the benefit of educational employers by emphasizing the role of apparent will. Also, the French legal system works in the interest of the individual who has accepted unilateral obligations according to her/his effective and creative will in two areas of intervention of mediating variables and limits of authority. This system pays attention to the role of fairness in labor-employer relations and gives the individual the obligation to cancel her/his unilateral obligations, while the Iran legal system makes decisions to the detriment of temporary educational staff by ignoring the contextual realities governing conditions of work.

5. Conclusion

The aim of the study was a comparative study of educational contracts with regard to the role of effective and creative unilateral will in the legal system of Iran and France. The main problem is that the Iran education system is facing the challenge of manpower shortage. For this reason, over the last two decades, the prevalence of employment contracts for the temporary employment of individuals in schools has led to legal disputes between the parties to the contract. In this study, it

was emphasized that one of the ways for educational employers to prevent temporary employees from complaining is to use their creative will to accept unilateral commitments. It was also pointed out that while in Iran the dispute resolution authority between employers and educational staff (related to the provisions of the contract) is the Ministry of Labor and Social Affairs, it is the arbitral authority regarding the unilateral obligations of the judiciary and courts. This difference in the authority has caused that in many cases, court rulings based on unilateral obligations and without considering the economic conditions of Iran society to the detriment of temporary educational staff.

Accordingly, the present researchers tried to examine the role of creative and one-sided will by comparing two legal systems. The first finding of the study was that this right was accepted by legislators in both countries, although by the end of the last decade the French legal system had not definitively affirmed it. This finding is in line with findings of Sehat, Rezapour & Ghiyasi (2019); Daraeei (2014); Samankan (2014); Parvin & Akbari Roodpashti (2013). Another finding of the study reveals that the differences between the two legal systems of France and Iran in terms of effective and creative will are much greater than their similarities. The present researchers could not rely on the results of previous research to support this finding, because these studies mainly examined fewer components. The next finding of the study is that the French legal system has paid more attention to the role of creative will in unilateral commitments, while the Iran legal system relies on apparent will to the detriment of temporary school staff. More attention to the internal will in the French legal system has also been mentioned in research of Khodadadi & Kohanestani (2020); Nouri Yoshanloui & Shahin (2018), Yazdanian, Tabatabai, Nemati & Parnian Joi (2012); Mujtahid Soleimani & Emami Gheshlaghi (2016), Maki, (2016); and Shahidi (2003). There is also a fundamental difference between the two countries that in France lawyers pay attention to both consent and contract in the process of drafting educational contracts, while in Iran only the existence of a contract without considering the consent is enough to vote for or against temporary school staff. Considering the findings of the research and situation of economic and educational systems of Iran, it seems that the Iranian legislators should learn from the experiences of the French legal system and amend the laws related to unilateral obligations in the relationship between employer and temporary educational staff.

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