

NEW CAUSES IN THE APPEAL

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ABSTRACT: *One of the rules predicted for protecting the rights of individuals against possible errors made by the Judges is to re-examine the procedure to evaluate the judges' function by other judges based on observing the rules of procedure and appropriate implementation of correct formal and substantial rules. Rehearing the verdicts of the Court of Appeals is among the measures that have been adopted by the legislatures of most countries including Iran and France to achieve fairness and accuracy in the procedure. Appealing is eligible to some effect one of which is the transitional effect which means that the case with all its subjects and verdict issues is transformed from the lower court into the Court of Appeals. The Court of Appeals in order to consider the verdicts of the case has some authorities and on the other hand since the case is addressed in the lower court, the Court of Appeals and the parties of the appeal are faced with some limitations addressed in the present article.*

Keywords: Cause, New Reasons, New Claim, Appeal, Subject Matters

1. INTRODUCTION

One of the most important tasks of the states is to solve the hostility between people in the society in order to establish order and justice. The court is the most important manifestation of this duty. According to some authors [1] the judges in the courts are not free from mistakes and wrong in the execution of their duties and like any other human beings may be the subject of error and uncertainty which is the source of mistakes. So for litigants the legal guarantees are needed so that using this insurance the party upon whom the verdict has been issued wholly or partially would be able to object the verdict. This legal guarantee means that complaint of judicial decisions provides the reinvestigation of the case. Appeal is one of the ways to complaint against the vote and this method of complaint meets the following effects: the effect of the suspension, the effect of transition and the end of the legislature of the lower court. The elegance of this discussion in practice is discussed by the judgment of the court so that when they encounter a new cause in the appeal reach a decision based on the correct legal basis. In this article we will challenge the types of limitations and authorities of the Court of Appeals. As well as whether there are limits in terms of claim and to provide new reasons and causes at this stage of the proceedings.

2. Cause, Origin of claim, direction of claim, legal argument, types of causes

2.1 Causes and Origin

The cause is the breach of the committed by the obliged party based on which the obligee assumes himself to be right [2]. In fact the cause is the factor that has disturbed the existing order and changed the process that must have been pursued [3]. In the Civil Procedure Code we witness the claim origin in the incidents of the prosecution. The incidents of the prosecution are the events that occur during the investigation of the main claim and in the Civil Procedure Code, enacted in 2000 it is known as "the incidents". One of the incidents is the demand of the main parties from each other and if it is made by the plaintiff it is known as the additional demand (*demandeadditionnelle*) and if it is made by the defender it is known as the counter

demand (*demandereconventionnell*). The existence of claim origin expands the realm of claims of denegation. Because in many claims of denegation, even though the claim origin is the same as the main origin but there is not a perfect connection between them.

There is perfect connection between the main claim and the claims of denegation than "... making decisions about each one affects the other one" (Article 141 Civil Procedure Code) and in our case decisions in each of these claims is not effective in other cases. In the current Civil Procedure Code and the former law in the realm of claims of denegation and regulatory actions there were irregularities and poor dispersion. For example, in Article 17, although the relationship between the mentioned claims is mentioned but the full discussion is mentioned in Article 141 of this Act in the discussion of counter claim and we may face the question that whether other claims including the third party involvement should consider the same criteria. Legal procedure, judges and lawyers provide positive answer to this question [4]. In fact there is a perfect relationship that if the claims of denegation are not raised, the future claims of the denegator will be accepted and it will certainly affect the former verdict partially or totally because otherwise the counter effect of the claims would be ineffective. Criteria set by the legislature in CPC in 1939 are derived from 54 CPC of Lebanon adapted by the authors [5]. In discussing the origin of the claim the mere existence of the denegation origin is not enough to raise the claim of denegation and the violation, breach or other issues causing the case should be proven.

2.2 Cause, direction of claim, legal argument

The cause must be based on the issue that has emerged in reality which is presented as the "direction" or "the element" in the legal writings. The fifth chapter of NCPC as "the directions of appeal" includes the issues that state the criticisms of the sentence and the term direction is the same as the term used before the warrants and the subject. Then considering the above description the direction is synonymous with the cause, of course, subject to the condition that the warrants and the subject issues are mentioned in it [2].

In the discussion of legal terms and even in the discussion of interpreting the written documents of a claim may lead to the confusion that the legal reasoning may include the warrants and it is inseparable from them in some cases also in the concept of the cause it is possible that in the concept of claim in the rule of the validity of the closed case the separation of the mentioned case seem difficult [6]. In French law the term motif is explained as the principles that justify a verdict and these principles must be noted before announcing a verdict [7]. This basis includes the arguments and inferences of the judge that link the preliminaries of a vote (the event) after the argument mentioned in accordance with the appropriate sentence, and finally the announcement and the result of a vote. In our texts in paragraph 4 of Article 296 of CPC one of the components of the court verdict is the direction, reason, document and ...based on which the verdict is issued. However the lack of reasoning of the vote is not considered as the causes of rejecting the vote but the French law the lack of reasoning of the vote is one of the reasons of rejecting the vote at the appeal stage [7]. Lack of response to the arguments raised by the parties' lawyers in the votes issued by the Supreme Court's decision is among the issues that reject the votes made [8].

2.3 Types of cause

Generally the claim cause can be examined in two places, one at raising the case and the other when delivering the judgment [9]. The cause during raising the case is based on the contract and sometimes based on the crime branch (responsible for enforcement) and also sometimes finds other bases in each of these the elements of the cause are different and the plaintiff has to prove each one of these element to win the case. . For example in a case based on the contractual liability, the existence of valid contract is the basic condition for the realization of a cause. The lack of a valid contract leads the plaintiff's failure in the case.

2.3.1 contract-based causes

Based on Articles 227 and 229 of the Civil Code among the investigation of contractual liability conditions id the damage and the plaintiff has to prove that he is damaged. Also he must prove that the damage is caused by the contract fault besides the damage should be clarified under contract or common law or the law of compensation is provided. The concept of cause in contractual liabilities will vary depending on the type of request [9]. For example, if the plaintiff wants to prove the ownership against the defendant claims he has the ownership because based on the contract he has obtained the ownership, contract of sale is his cause of claim and he must prove the contract of sale and prove that all the basic conditions for the validity of transactions are true about this case.

2-3-2 Clam cause based on the civil liability

For realize the civil liability someone should be damaged. If there is no damage, there is no liability. It also comes from the requirement that to raise a claim of civil liability damages it is necessary and this is the civil procedure code that says: When there is no benefit no claim is possible.

The second condition of civil liability is the existence of cause of the innocent act based on which the cause of damage may be a person or the persons he works with or the objects under his supervision. There three types of civil liability including: responsibility for personal act, the action of others and inanimate objects. Proving the defendant's fault in civil liability is a responsibility of the readers unless the liability of the defendant is assumed by the lawmaker besides these two conditions proving the causal relationship between the act of the defendant and the damage is based on the realization of civil liability. Round victory of the plaintiff in civil liability lawsuit is essential. The causes of the claim in the cases of civil liability are the type of the fault and the issued documented [9].

2-3-3 terms of fairness of the cause

Cause in order to be acceptable in the court must entail some conditions these conditions can be studied under several titles [9].

Being a legitimate – to be determined and possible - the cause of the claim must be legally provable - causes of conflict must be driven from the dispute.

3. Second chapter: the nature and condition of Appeal

The way of complaint against a verdict are complain or correction. There is another classification based on which the ways of complaint are divided into the common (general) and extraordinary ways. The use of common conditions of complaining is usually without any condition [10]. One of the ways of common complaint is the appeal. Appeal litigants are the parties of the lower stage. However, third parties may also play a role in the appeal case.

3.1 Conditions of applying appeals in the final judgments

Using these appeals depends on some conditions. A: One of the conditions for applying Article 18 is the finality of judgments, which means that appealed votes should be final. B. Another condition for applying Article 18 is the votes of the judges is against the Sharia and law. C: But this kind of appeal against the Article 326 of the former law is based on time and it should be done within a specified period and based on Clause 2Article 18 it must be done within one month from the date of notification of final verdict.

3-2 appealable sentences

3-2-1 sentences in financial claims

Pursuant to Article 331 of the new law the sentences verdicts on the financial cases the values of which are above 3 million Rials are appealable. The issued verdict which was final can be appealed. Also if the demand in the plea was more than 3 million Rials and it is reduced before the verdict lower than 3 million Rials the verdict will be final [4].

3-2-2 sentences in non-financial claims

All non-financial sentences are appealable which does not make any difference whether the claim is essential or credential.

3-3 custodial decisions and appealable cases

Guardian, executor or trustee dismissal Warrant (Article 47 non litigious matters act) Stone sentence [4] Stone Survival, Stone rejected plea (Article 66 non litigious matters act) and ... are appealable. Article 332 of the new law the mentioned petitions are the certain ones and they can be appealed if the verdict about the principle of the claim is appealable. The petitions include: the annulment petition, the rejected plea issued by the court, the rejection of the case, the lack of hearings, the collapse of the claim and the lack of capacity of the parties that are predicted in paragraphs (a) to (J) of the mentioned article.

3-4 Non-appealable verdicts

Legislature in the amendment to Article 331 of the new law has declared the verdict evidenced by the admittance in the court as non- appealable. The verdict documented by the confession is non- appealable in case of confession non-appealable if it is made at the court, According to Article 203 of the new law "If the confession is performed during the discussion at the negotiations or in one of the bills that have been submitted to the Court the confession is considered". Also in the amendment to Article 331 of the new law the verdicts documented by "the vote of one or more than one experts that the parties have authorized them in the claim cannot be appealed. The Person or persons involved must be official expert. There is a votes of the General Board of the Supreme Court based on which the confirmation of the verdict is based on the certified consensual decision that the parties have voted him and it is confirmed in the rule of non litigious matters act.

3-5 the effect of Appeal

3-5-1 The concept of the jurisdiction termination of the lower court

After issuing the verdict the lower court is released from the proceedings, however it maintains its authority to investigate and even the action, but if the verdict is appealed it terminated the competence. According to article 309 of the New Law the courts issuing the lower verdict can amend their votes after the verdict and despite freedom of prosecution but this is before the appeal in fact after the appeal based on the Article 351 of the new law it is under the jurisdiction of the court of appeals [4]. One of the effects of termination of the jurisdiction of the Lower court is that the Lower court does not have any authority over the matters discussed before and they are under the jurisdiction of the Court of Appeal.

3-5-2 the concept of transitional effect of the appeal

The transitional effect of the appeal means that by the means of the appeal the case is transmitted from the lower court to the Court of Appeals with all subjects and related rule. The Court of Appeals has the total authority over the present claim and can make decision based on it. Appeals Court as a lower court can address and judge both the quantitative and qualitative issues. So it can make decisions such as local search, expert examination, taking an oath, hear witnesses, examine the authenticity of the document and.... Since it is possible to issue a new reason in the appeal, the appellant can provide new reasons to approve his

claim. So if the appellant provides new documents to prove his claim and the appealed remonstrated the authenticity of the document the court of appeals can issue the investigation to verify the authenticity of the document. Therefore all the actions taken by the lower court to establish the issue the Court of Appeals is capable of performing the same actions. About the legal aspect it can be said that since the appeal is the concept that initially has been discusses and it is the review of the lower court actions, therefore the Court of Appeal has the total authority in this regard as well.

But about the appealing the appealable cases the Court of appeals takes another action. The Lawmakers in Article 332 NCPC has predicted the appealable dictums. The dictums counted in this article are among the decisive case dictums and they are only appealable if the verdict on principal case is appealable. These dictums include: petition annulment, petition rejection made by the court, lack of hearing, abandonment case, the lack of capacity of one of the parties predicted in the (A) to (J) paragraphs of Article 332.

Another issue is that whether the extraordinary ways including appeals and rehearsal justice meet the transition effect. In case of the Appeals it should be noted that unlike the appeals (revision) the filed appeal does not have the transfer effect. It means that it does not transfer the case to the Supreme Court with the same order addressed in the lower court not all matters and legal issues are raised in the Supreme Court, the Supreme Court can implement the inspect and monitor only on the issued raised and the issues considered as violations. But the nature of the dispute cannot be entered [1].

If the direction of the appeal is the restored a document which was hidden since the document has to be reported attached to the petition, the referred to can claim that the document is forged or rejected or if the direction of the appeal of the verdict is contrary the other party can prove that the cause has cause this contradiction. So the appeal has the transitional effect within the claimed range, which means that the court is case of cancellation of the verdict should discuss and precede the subject again. So it is possible to decide about the investigation, local search, expert opinion and... in the appeal [4].

The Court of Appeals cannot be involved in the issues more than the ones addressed in the lower court. Secondary Judges are not involved in the issues discussed by the initial judges. So providing new claims in the appeal is prohibited [1] and the popular rule prohibiting new claims in appeal must be observed. Article 349 NCPC mentions: In the Appeals section only the part being appealed and ordered in the lower court will be addressed. However, if in the lower court the subjective examination is not performed and no order is issued, the court of appeal is not authorized to address the issue subjectively because the higher competence of the higher court over the lower court is inherited and the higher court does not have the jurisdiction to address this case [11].

In this regard a decree is made by Supreme Court that states: "if the Court of Appeals cancelled a verdict of the lower court it should asked the same court to precede and it should not take an action". The prosecution of the Court of appellant is restricted to the appellant and his counterpart. Article 359 declares "The vote of the Court of Appeals cannot be used otherwise by the parties of the appeal" [4]. The transition effect is not transferable to all subject matters and its effect can be limited to the rule known as "Tantum devolutum quantum appellatum" [1]. Limiting the transition effect of the appeal is possible everywhere but in cases that the sentenced items in the initial rule are not separable i.e. Such that objection to one part requires the indirect objection to another part.

3-5-3 the suspension effect of the appeal

Someone who appeals believes that the verdict against him is incorrect and when the appealing is allowed to the appellant the legislative must have accepted the suspension of this verdict as well. Therefore, here the discussion is about the lower verdicts the faiths of which depend on the appeal and the implementation of these votes will be suspended until the Court of Appeal [12]. The effect of the suspension effect is that as long as there is time for the appeal the defender cannot ask for the implementation of the verdict and this claim is accepted when the confirmation of the verdict is proven [1].

4. Third chapter: The analysis of raising a new cause in the appeal

Although raising a new claim is forbidden in the appeal but in some cases the situation is different and in the appeal it is possible to use the reasons to prove the claim and defend it and there is no prohibition about that. Article 1275 of the Civil Law stipulates that "Everyone has the right to claim and should prove it and the defendant if claims anything, he should prove it as well".

The reason is any means by which the parties can refer to and prove their claim or defend themselves. So the plaintiff uses the reason to prove his claim [4]. The reasons to prove the claim complements the right and the right holder has a right in it as well [13]. The new reason is the issues used to prove the claim that might be changed from one stage to another without changing the claim. For example, in the lower (initial) stage a document is provided to prove the claim. In the appeal it is possible to refer to the testimony of the witnesses or about the objects of cancellation of the obligations it is possible to refer to the compensation, and transferring the obligation [1].

Clarifying the claim from the reason does not need the legal distinction. Claim is a promise which is contrary to the principle (the principle of non-original Astshab- Abahh principle and the principle of necessity and the validity of contracts, etc.) or contrary to legal principality (bad presumption, the presumption of marriage and ...) or against an issue credited by the legislature but the reason is any means predicted in the law referred to by the parties to prove the claim (Article 194 of the new law). So the plaintiff uses reason to prove his claim [4]. It is not possible

to change the cause in the appeal if we accept that by changing the cause the claim is changed as well we should accept that the appellant has raised a new claim in the appeal (Article 508 of the former law).

The use of reason is allowed in the appeal. One of the cases is when the plaintiff has claimed something and has referred to reason as well. In this case providing a reason for a claim that is discussed before is allowed [4]. For example the plaintiff has asked for money and referred to the witnesses and his claim is rejected in the lower stage. He appeals and this time since he has access to a new document about his demand, he can provide a new reason. Another point is that providing a new reason to prove the rights and defenses made in the lower stage is permitted.

When the plaintiff or the defendant refers to a reason in the lower stage based on Article 509 former law "since the means of the new reason are not new claims" it is possible to use these reasons in the appeal irrespective of the fact that using such reasons was possible or impossible for them.

5. CONCLUSION

Using a new cause in the appeal is allowed, however this is limited to special cases, one of the cases is when the plaintiff has raised a claim in the lower stage and referred to a reason. Another case is that reference to new reasons to prove the claims and defenses that can be raised in the appeal is allowed. Raising a new claim in the appeal is prohibited thus raising a new reason to prove of defend it is cancelled.

The advocates of new cause in the appeal believe that there is a difference between the cause and claim; cause is something based on which the claim is founded so if the appellant refers to a new cause for the claim mention in the lower stage the prosecution should not be prohibited. Second, the legislature considers raising a new claim in the appeal rather than the cause. Third, It is possible to provide a new reason in the appeal based on the paragraph 6 of Article 341 of Civil Procedure Code and the reason might include a new cause. The cause is the right that is claimed which is something that the plaintiff has based his claim upon it.

Therefore there is considerable difference between the cause and claim and there is no legal prohibition against raising a new cause to prove the claim raised in the lower stage beside the fact that in the foreign laws: in Article 362 of Civil Procedure Code of France the parties are allowed to rely on new causes to prove the claim made in the lower stage.

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