Examining subordinate appeal in Iranian law and comparing to French law

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Abstract

In articles 413 to 417 of the Civil Procedure Law, the legislator has proposed the subordinate appeal, which has some ambiguities in its criteria, meaning and content. A subordinate appeal gives the appellant the opportunity to request an appeal hearing while responding to the main appeal petition, regarding a part of the judgment complained about appeal, which he considers to be harmful to his rights or against the law and Sharia. This research has been conducted in analytical-descriptive method using library tools and its purpose is practical. The findings of the research show that there are many ambiguities for the experts regarding the subordinate appeal, according to the summary of the subject, and in this article, an attempt is made to extract the shortcomings and ambiguities regarding the subordinate appeal, and according to the opinion of the legal doctrine, the judicial procedure and by relying on jurisprudential and principled sources, those ambiguities should be resolved and a new plan should be presented in this regard.

Keywords: Subordinate appeal, Appeal, Supreme Court, French law

Tob Regul Sci. ™ 2022;8(1): 3830-3842
DOI: doi.org/10.18001/TRS.8.1.291

Introduction

According to the conditions set forth in articles 366 to 370 of the Civil Procedure Law, the verdict issued by the trial court or the appeal court can be appealed to the Supreme Court of the country, if any of the parties appeals the verdict in the legally prescribed period, it is considered the main appeal, although the legislator acknowledges in Article 413 of the Civil Procedure Law: "The appellant can request an appeal hearing, while the response to the petition appeal from the ruling that is the subject of the appeal against the direction that it is to his detriment or against the Sharia and legal regulations. Some jurists, in interpreting this article, have considered it specific to a situation where the verdict is issued partially in favor of the plaintiff and partially in favor of the defendant (Shams, 2010: 403). In my opinion, this argument is not correct, because in the case where the plaintiff files a lawsuit against the defendant, sometimes the lawsuit is rejected due to the form or the lawsuit, and sometimes, after verifying the plaintiff's legitimacy,

the court orders the defendant's sentence to the extent or less than what was requested, in a situation where the court has ruled on a part of the request and does not consider the request of the petitioner to be valid on the other part. In fact, it deprives the petitioner of a part of the request. Not to recognize the respondent as entitled to anything that can be attributed to him in this case.

There are many ambiguities regarding the subordinate appeal and questions are raised that the author of the article tries to clear up the ambiguities by answering the questions. First, who is the beneficiary in the subordinate appeal? Second, the appellant can request an appeal based on what ruling? Third, from what date does the deadline for appeal begin? Fourth, if the main appellant has not submitted a bill, will the right of subordinate appeal be lost for the appellant? Fifth, how is the cost of subordinate appeal proceedings calculated? Sixth, how is the third party's objection to the appeal verdict?

Definition of subordinate appeal

In civil proceedings, the subordinate appeal is the appeal if the appellant, before the issuance of the appeal decision and within the deadline for the exchange of bills, makes a complaint against the appellant regarding the part of the judgment under appeal that he considers to be harmful to him and contrary to the law, even if the prescribed period for the request of appeal, in principle, the right of appeal has passed. (Jaafari Langroudi, 2013: 497) Therefore, the subordinate appeal is a right that the legislator has considered only to the appellee, to present the appeal to the main appellant in the position of exchange of bills to that part of the document that he finds harmful. Another possibility is that both of them have been convicted of a part of the verdict and they will appeal within the legal term, in this case, the appeal of each of them will be numbered as the main appeal and will be subject to the provisions of the main appeal, in this case, only one of the parties has an appeal request and the other party submits to the verdict. In such a case, the legislator has allowed the appellant to request a (subsidiary) appeal against the main appeal of the appellant by predicting the subordinate appeal. In Article 1010 of the French Civil Procedure Code, subordinate appeal is also mentioned and it is called "motivated appeal" (Mohseni, 2012: 242).

Indeed, subordinate appeal is considered as one of the ways of protesting against the contested decree, which has a deterrent and preventive aspect, that is, one of the parties waives his right to appeal so that the other party does not appeal. The legislator gives this right of subordinate appeal to the party who had passed his right of appeal for the purpose of satisfaction when he applied his right to appeal regardless of the submission of the other party. Also, a person who is a party to the dispute but is not a party to the main appeal can ask for a motivated appeal. The advantage of the motivated appeal is that no one can destroy the other party's right to a subordinate appeal by not filing an appeal. Although this shortcoming has been solved to some extent by the provision of Article 404 of the Civil Procedure Law, which states the possibility of

extending the vote in indivisible votes, but it is not exactly what is stated in French law (Mohsani, 2018: 219- 239). As we know, the parties have been encouraged to accept the ruling, but if one of them appeals, the Supreme Court, according to Article 161 of the Constitution and Article 366 of the Civil Procedure Law, covers the action with the main mission of comprehensively monitoring the correct implementation of the laws in the courts and puts the subordinate appeal in the order of consideration.

The emergence of subordinate appeal

As we know, the most important laws that were approved after the constitutional revolution in relation to the judiciary and the judicial system are the Law on the Principles of Judicial Organizations and the Law on the Principles of Trials and the Civil Procedure Law approved in 1929. The Law on Principles of Trials, based on the principles of the amendment to the Constitution, dealt with the Court of Tamiz and its role in monitoring the compliance of judicial decisions with the laws, without entering into the nature of the lawsuits. In the Civil Procedure Law of 1318, we had subordinate research in articles 503 to 507, subordinate appeal in articles 544 to 547, and subordinate reinstatement in articles 608 and 609. But the reasons for their origin were not clear at that time, it should be seen in the old law to be definitely known.

In the civil procedure law approved in 1318, the lawgiver had explained about the subordinate investigation as follows: "Whenever one of the litigants has requested an investigation of the first judgment, the other party can, as long as the investigation proceedings have not ended, from the same judgment regarding his conviction or the direction that he is dissatisfied with it, he can request a research, even if the prescribed period for the research has expired for him, the subordinate research will be accepted only in front of the research applicant and from the person who is the party to the research lawsuit, if the original research applicant returns his research petition or the court rejects his petition or the main research lawsuit is dismissed, the right to subordinate research is lost, the request for subordinate research may be appealed during the hearing of the objection to the verdict of absence of research and during the hearing after the violation of the verdict at the appeal stage. When one of the parties to a lawsuit requests the reinstatement of a judgment, the other party can apply for the reinstatement of the proceedings against that person as long as the proceeding of the reinstatement of proceedings has not been terminated from the same judgment in relation to his conviction, if there is one of the reasons for the reinstatement of the proceedings. Even if the time limit for resuming proceedings against him has expired.

In Article 609 of the Civil Procedure Law of 1318, it is stated: the order of requesting the reinstatement of subordinate proceedings is in accordance with the order of secondary research, as well as in Article 1010 of the French Code of Procedure, which considers the conditions of a motivated appeal or secondary appeal to be the same as the conditions listed in the articles of subordinate research and a special section has not assigned to it. With the passage of time and the

approval of the civil procedure code of 2000, only the subordinate appeal remains, but the reason for this issue is not clear, and it is not clear why the subordinate research or the subordinate appeal was omitted in the new law, of course, it seems that this issue is because appeal proceedings are a form of formal proceedings and are different from research proceedings which deal with both substantive and formal aspects, and the removal of this part is due to the prevention of the delay of proceedings. For a better understanding of the issue, we will apply the articles of subordinate appeal in the civil procedure laws approved in 1929 and 2000:

In the law approved in 1929, the appeal is defined as follows: "As long as the decision has not been issued, the appellant can file an appeal against the judgment that is the subject of the appeal against the direction that he considers to be against the law and to his detriment, even though the prescribed period for the appeal request against him has expired. But in the law approved in 2000, some of this definition has been changed: "The appellant can only appeal the ruling that is the subject of the appeal in the context of the answer he gives to the petition in relation to the aspect that he considers being detrimental to himself or against the legal standards and regulations accordingly. In this case, the appeal request will be sent to the party to respond in writing within twenty days, even if the prescribed period for the appeal request has expired».

The first change of these two articles is that it is specified in the law approved in 1929 that the respondent can appeal as long as the decision has not been issued, but in the law approved in 2000, it is stated that the appellant can answer the appeal petition, in the new law, the deadline for filing an appeal is limited to the deadline for responding to the appellant's bill, or the exchange of bills, not until the decision has been issued, this innovation helps to avoid delaying the proceedings and prolonging the proceedings. Another change in these articles is the part that the former law states: "Regarding the direction that considers it harmful or contrary to the law, but in the law of 2000, in addition to harm, the titles against Sharia standards and legal regulations are also mentioned.

Here, we should raise the question of what is meant by violating the Shariah standards? In Article 477 of the Criminal Procedure Law approved in 2013 and in the subject of retrial by the head of the judiciary, the legislator has mentioned the contradiction between the Sharia, which is the same as the certainty of jurisprudence, but in this article, he refers to the violation of the Sharia with the general, vague and broad interpretation, a person who is not a mujtahid and even a non-jurist, who is placed in the position of a subordinate appellant, by what criteria should he infer that it is against Sharia and make it the basis of his objection. It would have been better for the legislator to reduce the scope of the interpretation with the stipulation of contradiction and at the same time reduce the cases of ambiguities or abstractions. The next problem is that if the branch to which the case is referred for investigation does not have a mujtahid judge, how is it possible to recognize that it is against the standards of Sharia?

In the note of Article 3 of the Law of Procedure, it is specified that if the judge is a mujtahid and considers the law to be against Sharia, the case will be referred to another branch for consideration, and also in Article 3 of the executive order of Article 477 of the Code of Criminal Procedure, the judge issuing the verdict or other judges related to the case and the judges who execute the sentences are obliged to inform the head of the judicial district with the prosecutor in a reasoned manner, when faced with opinions against Sharia. In line with supervisory duties, the heads of the judicial areas and the prosecutors, if they believe that the issued decision is against Sharia, they are obliged to inform the Chief Justice of the province by preparing a report and arguing that the decision is against Sharia. In fact, one of the conditions in both cases is that the judge must be able to know the Shariah, in which case there will be no problem in practice, but the determination of being against the standards of the Shariah is with the mujtahid judge and not the non-mujtahid judge of the defendant's law, this article in practice creates a problem unless we say that the deputy of referral should refer the case to a branch that has a mujtahid judge, which does not reduce the defects of the article.

Another change is that the old law only pointed out that the subordinate appellant can file his request even after the legal deadline has passed, while the current law, in addition to being out of time, has limited this issue within the twenty-day deadline of bills. Another change was the reference of the old law to the position that the request for subordinate appeal must be made in writing. But this part has been deleted in the law of 2000. However, regarding the similarity of these two laws, it can be mentioned that: the subordinate appeal is accepted only against the appellant and from the person who is the party to the request or petition for the appeal, also in the case that the main appellant returns his appeal petition or the petition is rejected, the right to request a subordinate appeal will be canceled and if a subordinate appeal has been requested, it will become ineffective.

Beneficiary in the subordinate appeal

In subordinate appeal, the issue of being a beneficiary needs to reflect on the legal texts so that the ambiguities for jurists can be examined and resolved. In the text of Article 413 of the Civil Procedure Law, the legislator has allowed "subbordinate appeal" for one of the appellee who considers the appeal to his detriment or contrary to Shari'a standards and legal provisions: "The appellee can appeal only in response to the petition of appeals from the ruling that is the subject of the appeal against the direction that he considers to be detrimental to himself or against the Shariah standards and legal provisions». However, the opinion of some jurists is based on the belief that "it is not necessary for the appellant to have suffered as a result of the court order in order to be able to request an appeal" (Mohajiri, 2016: 401), while others believe that "... the other side, that is, the appellant, in addition to the written response to the appellant's petition, can also appeal regarding the part of his conviction in the appealed judgment or the claim that it is against Sharia or the law (Nobakht, 2014: 465).

According to Article 414 of the Civil Procedure Law, a subordinate appeal is accepted only against the appellant and from someone who is the party to the original appeal. According to the ruling of this article, if the main appellant, in addition to the main appellee, has made a third party a party to his request, regardless of whether the request is justified or not, the third party is still a party to the main appeal, and based on Article 414, he can submit a subordinate appeal request; But it must be said that this appeal will be rejected, just as the main appeal to the third party is also rejected.

Therefore, it can be concluded that even if a decree is issued completely in favor of the appellee, but the appellee has the possibility of filing a subordinate appeal with the understanding that the decree was issued against the legal provisions or Sharia standards. A number of professors are against this point of view and believe that "the main appeal request should be submitted within the legal period. The "appellee" party can simply request an appeal hearing from the ruling that is the subject of the appeal against that part that he considers to be against the law and to his detriment" (Metin Daftari, 2015: 683). We can see this point of view in the works of a number of other scholars: "The ruling on the part that is harmful to the appellant and is also against the law" (Jaafari Langroudi, 1996: 759). So, the second group of professors believe that "or" included in Article 413 of the Civil Procedure Law actually means "and" and the conjunction between the two Defendant.

In Article 609 of the Civil Procedure Code, the French legislator directly pointed out this point and stipulated that: "any party who is beneficiary has the right to appeal even if the provision against his interests does not benefit the other party" and thus to the most common concept of benefit in litigation, which is opposite to loss, has entered, and in appeal, it refers to another meaning of benefit, which is not opposite to loss. This concept seems to be consistent with the nature of the appeal, which in our laws, guarantee is matched with the decision with the law and Sharia (Article 366 of the Civil Procedure Code), although the Iranian legislator has seen no need for this emphasis. It seems that the legislator's intention in Article 413 of the Civil Procedure Law is that whether a person is aggrieved or not, he has the right to appeal, and the beneficiary in this article is not the one who bears the loss. Issuing a decree in favor of the appellee does not prevent him from exercising his right to file a subordinate appeal, and he can appeal if he considers the decision to be against the law and sharia.

Subordinate appealable rulings

According to articles 367 and 368 of the civil procedure law, certain rulings are appealable, now the question is, as a subordinate appeal, can a subordinate appeal be made from any ruling, or should a subordinate appeal, similar to the main appeal, only request appeal from the rulings? Maybe the answer to this question is obvious, but the rule of subordinate appeal and its allocation in the new law only for appeals (unlike the previous law which accepted this institution as a research institution) is the lack of attention and special care of the doctrine, what

is this topic and weakness of jurisprudence in this regard, on the one hand, and on the other hand, the text of Article 413, which considers subordinate appeal not only in that part of the judgment that is detrimental to him, but also if he considers it to be detrimental to him or against the legal provisions and Shariah standards, can request for appeal. This additional provision in this article strengthens the doubt that the rulings that cannot be appealed, if they are against Sharia norms or legal regulations, can be challenged in the subordinate appeal. For example, it is envisaged that the initial petition and the issued judgment will be about requests, part of which is appealable and part non-appealable, for example, it is possible that the vote due to initial request or file a lawsuit issues the divorce judgment and joint child custody that the decree issued regarding divorce is appealable and regarding child custody is non-appealable.

Now, if an appeal is filed against the divorce, can appellee complain for the verdict issued regarding the custody order as a response to the bill of appeal or not? According to the author, the answer to this question is negative. First of all, the jurisdiction of the Supreme Court over the trial court and the appeal court is inherent competence and the Supreme Court is superior can only deal with rulings that have changed the law. Secondly, it is true that the subordinate appeal is an out-of-time objection, but this type of appeal is only exempted from the deadline stipulated in the law for objection, and this exemption cannot be extended to other conditions of appeal, and other formal and substantive conditions must be observed for filing an objection, then the subordinate appellant in the capacity of appeal can only object to that part of the judgment which is legally appealable.

The deadline for applying for a subordinate appeal

The next question is, what date does the appeal deadline start? There is a specific date and deadline for the subordinate appeal request, but this deadline is not the same as the appeal deadline, but rather a deadline in which a person must respond to the main appeal, and the head of Article 413, which stipulates that the appellant can file an appeal while responding to the main appeal. Therefore, as stated, the subordinate appeal will be accepted only within the time limit set for responding to the main appeal petition for the appellee, and this deadline is twenty days as implied by Article 385. But the question is, from what date the beginning of this deadline is counted. From the date of submission of the main appeal petition or from the date of notification of the main appeal petition to the appellee or from the expiry date of the twenty-day deadline for exchanging bills and responding to the main appeal?

The law of civil procedure is silent on this matter, but the criterion of notification is announcement and knowledge of the person to be notified, as long as it should be noted that the notification has a method and not the subject matter, and as long as it is proven for any reason that the person is aware of the provisions of the order or decision that knowledge should be considered communicated. Therefore, it should be said that the date of notification of the main appeal is considered the beginning of the deadline for the subordinate appeal.

The date of notification of the appeal petition should be considered as the beginning of the deadline, because the appellant was not informed about the appeal before it was notified, and it causes the violation of the right to appeal. The expiration date of the deadline for the exchange of bills and the response to the main appeal should not be considered the beginning of the deadline for the subordinate appeal, because not only this issue will delay the proceedings and delay the proceedings, but also due to the exclusion of the subordinate appeal and the need to interpret it within the framework of the regulations distorts this possibility and strengthens the first possibility. What is the action of the court regarding the case where the secondary appeal is raised outside the twenty-day deadline stipulated in Article 385? In the answer, it should be said: if the request is not reasonable with a valid excuse, the answer to the main appeal and the request for the secondary appeal will not be considered, but if the action is taken outside the deadline with a valid excuse or a claim of lack of knowledge, according to Article 83 and also according to note one of Article 306 and Article 340 of the Civil Procedure Law, the person's excuse must be considered first and accepted if accepted.

The next question is the assumption that the main appellant has filed an appeal within the legal twenty-day period, but has not submitted his objection bill as an attachment to the appeal petition, or after issuing the correction of the defect issued by the office of the branch of the court that issued the contested decision indicating the submission of the objected bill has not been corrected in the appeal and has not submitted its bill to the court, the question is, in this case, does the appellee have the right to appeal or not?

In Article 413 of the Civil Procedure Law, the legislator has acknowledged that (the appellee the answer to the appeal petition...) perhaps at first glance at the text of the article, raising this question seems pointless, because the text of the article merely answers to the appeal petition and not a protest bill; But it should be noted that if the appellant does not present his bill of objection along with the petition or to the branch office, basically the petition of appeal will not be communicated to the appellee and the case will be sent to the Supreme Court with the same quality. It has been mentioned that the appellee has submitted his bill of objection and the petition and appendices have been notified to the appellee.

It is true that the second paragraph of Article 381 of the Civil Procedure Law considers the attachment of the bill in addition to appeal objections as a condition of the petition, and Article 383 of the Civil Procedure Law also considers the failure to complete the defect, including the failure to submit the objection bill in the process of removing the defect, as one of the cases of rejection of the petition. But it should be noted that Article 383 is aimed at not mentioning the directions of appeal and the failure to submit a bill of objection is not one of the cases of rejection of the petition. In response to this question, in the opinion of the author, the lack of notification of the appeal petition does not imply the right to appeal. If he is informed to the court or in other ways about the submission of the appeal petition, he has the right of secondary appeal and in this case it should be considered that the deadline for subordinate appeal is the date

of submission of the main appeal petition. Regarding deadlines in French law, according to Article 643 of the French Code of Procedure, one month is provided for objections to research, appeals, retrials, and appeals for resident persons and two months for persons residing abroad (Mohsani, 2012: 265).

The cost of subordinate appeal proceedings

The cost of the appeal proceedings against the verdict in Article 503 is explained:

Article 503 - The cost of written or oral petitions, including preliminary petitions and objections to absentee and counter orders, third-party appeals, third-party objections, appeals, retrials, power of attorneys, executive papers, etc., are the same as in Article (3) of the law on the collection of some government revenues and its consumption in certain cases - approved 1994 - or other laws have been determined, which are paid in the form of affixing and canceling stamps or depositing money into the treasury account».

In Articles 413 to 416 of the Civil Procedure Law, the legislator has stated the procedure for dealing with "subordinate appeal" that the exchange of bills related to it is the responsibility of the primary court or the appeals court since the Supreme Court of the country hears the main appeal, in such a way that if it approves or rejects the decision as a result of the main appeal, he must issue a decision about the subordinate appeal as well. However, regarding the fact that the Supreme Court of the country, while dealing with the main appeal, did not apply their appeal to any of the cases listed in Article 371 of the Civil Procedure Law and, according to Article 370 of the same law, should consider approving and concluding the appeal petition. It is obvious that regarding the subordinate appeal, it is necessary to issue an appropriate decision with reasoned and justified consideration.

Regarding the cost of subordinate appeal proceedings, according to the provisions of Article 416 of the Civil Procedure Law, it may be said that the legislator has simply excluded "subodinate appeal" from the conditions in Articles 380 and 381 of that law, so this cost should be paid by the subordinate appellant. However, there is a difference of opinion in this regard as well, and some people believe that: "The result of Article 416 is that it is not necessary to submit a petition and also pay the court fee for the subordinate appeal" (Nobukht, 2014: 466) and the opinion of some other is that "considering that the subrdiate appeal does not require the submission of a petition, it is obvious that there is no need to pay the cost of the appeal" (Mohajeri, 2017: 402).

Considering that the subordinate appeal is a kind of "preventive objection", the appellee, mostly to strengthen the objectionable vote and prevent the appellant from filing a false and baseless appeal, initiates the subordinate appeal. In addition, the subordinate appeal becomes ineffective if the main appeal petition is returned and does not create any rights for the appellee. Also, although the legislator has stated in the principles 34 and 159 of the constitution, "the principle of referring to the judicial authorities by beneficiary persons" as a common and general right, and

then the lawsuits that require the payment of legal fees are enumerated in other laws, but not considered the "subordinate appeal" as one of the exclusive cases of those lawsuits in those laws, and finally, subordinate appeal can be filed by means of a "request".

So, basically and as a rule, submitting a request to the judicial authorities does not require the payment of legal fees. Therefore, the "subordinate appeal" plan does not require the payment of legal fees for the main appellant, as this procedure is seen in practice by the judicial authorities.

Investigating the conflict of subordinate appeal with acquired rights

In Iranian law and in Article 415 of the Civil Procedure Law, it is stated as follows: "If the appellant withdraws his appeal petition or his petition is rejected, the right to request a subordinate appeal shall be revoked, and if a subordinate appeal request has been made, it shall become ineffective, in the last part of Article 550 of the Civil Procedure Law states that "..if the main research request (or the main appeal) is not admissible, it will not be accepted either". The cases mentioned in these articles refer to the rejection of the appeal petition, but if it is determined in the hearing of the appeal petition in the Supreme Court that the objections of the main appellant are unfounded and these objections are declared rejected, then the objection of the subordinate appeal will not be ineffective. (Mohajeri, 3:198) Now here we want to know whether the right of subordinate appeal is an acquired right for the subordinate appellant or not.

Acquired rights in the fundamental rights are rights that are assigned or granted to a person in full or in certain cases, which should not be lost by the actions of another person. This is a fair right and the government should recognize and support it. In this regard, the question arises, what will be the status of acquired rights created for individuals, as well as the governing law? In fact, there is a conflict between Article 415 and acquired rights or not? In this assumption, the theory of acquired rights is cited as a basis for justifying the laws and a reference to the importance of this institution in the field of conflicting laws from one legislator and in different times.

A brief definition of "acquired rights" can be obtained, and in this regard, by checking the legal doctrine's writings, it can be seen that they have also described definitions for "acquired rights"; Among others, Dr. Katouzian defined the acquired right as "privilege and benefit belonging to a person who is protected by the laws of any country in the capacity of justice and gives him the ability to seize the right and resource of others from encroaching on it" or some of the doctrine of acquired right has considered it as a right arising from the contract and the law and in the sense of a privilege that is acquired by the will and discretion of the owner of the right and should be protected as an acquired right against the change of laws. Perhaps the main appellant intended to delay the proceedings and now that he has faced the request of the secondary appellant and has realized that his claim will be rejected and this article unfortunately allows him to deny this right on his behalf. From another angle, it seems that the rejection of the secondary appeal request is due to the fact that the subordinate appellant did not pay the legal fees, which

in the writer's opinion, it would have been better if a deadline for fixing the defect was set for this case than if the subordinate appellant paid the legal fees, they rejected the request.

In other words, acquired rights are rights that have been established correctly according to the relevant laws, and the acquired rights cannot be violated by a subsequent law, for example, in the criminal procedure, if the right to protest has been created for the protester according to the law, and the subsequent law of this right of the objection or its duration has been limited or revoked, this limitation does not apply to the previously acquired right, the situation is the same, the subordinate appellant following the main appellant and according to the law has acquired the right of subordinate appeal and it is not possible to revoke the right that the law has created for the subordinate appellant. The legal logic in the civil procedure also requires that the authority of the proceedings should not be given to the other party and that the fate of the case should not be entrusted to it, except in cases where the defendant defends in form or substance. It is not clear why the legislator has left the right to revoke the acquired right of the subordinate appeal to the discretion of the main appellant. The article described in this chapter is against acquired rights and needs to be revised.

Objection of the third party to the subordinate appeal decision

Considering that the proceedings of the Supreme Court are formal, therefore, considering that Article 418 has foreseen the possibility of a third party protesting the first and reconsideration votes, and it has not mentioned the appeal votes, whether primary or secondary; During the rule of law, all the legal experts believed that the decisions of the Supreme Court of the country cannot be challenged by a third party, and they considered the objection of a third party against these decisions unnecessary. The reason is that the appeal proceedings in the Supreme Court were not substantive and if the appeal decision was overturned, the third party objector could enter the trial as a third party at the stage of the substantive proceedings, after the violation, or he could have waited, after the issuance of a new and definitive verdict, and object of the third party; Therefore, the third party's objection to the decision of the Supreme Court was not acceptable.

Advisory opinion No. 2/4009 dated 2018:

Question: Can the decision issued by the Supreme Court be contested by a third party?

Answer: First of all, the third objection to the opinions of the branches of the Supreme Court of Iran, which conduct formal proceedings, is not foreseen in the legal regulations, but it seems that in cases where the verdict issued by the Supreme Court, whether of first instance or appeal, has been approved by the branch of the Supreme Court of Iran. The third objection to that judgment can be heard and dealt with in the same court that issued the final judgment in accordance with the provisions of Article 417 onwards of the Law of Procedure of General and

Revolutionary Courts in Civil Matters, but in any case, the handling of the third objection is the responsibility of the court that issued the judgment or its successor.

Secondly, the third party's right to object to the votes issued by the courts from the principle of the relative nature of the votes has been accepted as a definite principle, and in this regard, the legislator has predicted the relevant provisions in articles 417 and the Law of Procedure of Public Courts and the Revolution in Civil Affairs 2000. Since the third party was not one of the litigants leading to the objectionable verdict, and consequently his claims and documents were not examined by the court issuing the decision, the authority to handle this objection was given to this court. On the other hand, the handling of this objection by another court will result in this corrupt result that if the objection is justified, the decision of one court will be annulled by another court. With this introduction, in the assumption that the special branch of the Supreme Court provided in Article 477 of the Criminal Procedure Law of 2013 has issued a decision in violation of the court's decision and carrying out substantive proceedings, since the special branch of the Supreme Court in this case, unlike other branches aforementioned court entered into the substantive proceedings and acted like a court; Therefore, using the criteria of Article 420 of the Civil Procedure Law, handling the third objection is within the jurisdiction of the special branch of the court issuing the substantive decision, and in any case, handling this objection by another authority, since it may require the cancellation of the substantive decision of the said special branch is against the legal standards.

If there is a third objection to a petition that has already been filed in the Supreme Court, in any case, the petition must be given to the issuing court for a final decision, and there is no need to prescribe proceedings in the Supreme Court. There is no objection by a third party only about the rulings of the Supreme Court. The same situation exists now. Because the Supreme Court has no jurisdiction and is the authority for violation, then the third-party objector is obliged to act as mentioned, and the Supreme Court is not the authority for handling the objection of the third party. In French law, the objection of a third party against the decisions issued by the Supreme Court is not accepted.

Conclusion

"Subordinate appeal" is one of the ways of protesting the decision, which the appellee requests during the exchange of bills by means of a written request from the court issuing the appealed decision. Considering that this type of objection is made with a written request, if a writ is issued completely in favor of the appellee, but the appellee, with the perception that the writ was issued against the legal provisions or Sharia standards, has the possibility of filing a subsequent appeal and filing a lawsuit without paying the legal fees has the ability to listen. In appeal, benefit means both loss and disagreement with the law or Shariah. The subordinate appeal is heard even in cases where the deadline for the appeal has expired for the applicant of the main appeal also the

subordinate appeal is accepted only against the appellant and only from the person who appealed.

The beginning of the deadline for subordinate appeal is the beginning of the same deadline for the exchange of bills in Article 413, due to the formal nature of the objection, the entry and involvement of a third party has no meaning in it, and even in the laws of both countries, a third party objection to the appeal decisions issued by the Supreme Court is possible. In article 550 of the French procedural law, it is stated that subordinate research or instigated research can be proposed at all stages, even if the research applicant has faced the loss of the right to exercise the right to research in the main, despite this, in the recent case, if the main research appeal is not admissible, the subordinate research appeal will not be accepted, and in Iranian law, if the main appellant withdraws his appeal or is rejected for any reason, the subordinate appeal will also be ineffective due to its subordination.

Resources

1. Jafari Langroudi, Mohammad Jaafar. (1996). Legal Encyclopaedia, Tehran, Ganj Danesh Publications.
2. Jafari Langroudi, Mohammad Jafar. (2013). Legal Terminology, Tehran, Ganj Danesh Publications.
3. Mateen Daftari, Ahmed. (2015). Civil and Commercial Procedures, Tehran, Majd Publications, fifth edition
4. Mohajeri, Ali. (2016). Summary of Civil Procedure Code, Tehran, Fekhresazan Publications.
5. Mohseni, Hassan. (2012). French civil procedure, Tehran, publishing company, second edition.
6. Mohseni, Hassan. Rostami Lashe, Hadi. (2019). "Criticism and justification of the judicial procedure, the criterion of benefit in the secondary appeal", Kanun Vokla magazine, No. 242.
7. Nobakht, Yusuf. (2014). Taking a look at civil procedure, Tehran, Radnoandish Publications.