

Investigation of a lawsuit in the labor law of Iran and France (comparative research)

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Abstract:

In the old European law and the old European prosecution system, the use of supernatural evidence to prove a crime was natural, and such evidence had judicial validity and value, and their use to prove a crime was accepted. In the Roman Empire and medieval Europe, the system of legal evidence gradually became popular, and during the French Revolution, the method of persuading the conscience of the judge replaced the system of legal evidence, which is still reflected in the Code of Criminal Procedure. The Iranian legislature also adapted the system of moral evidence through the Code of Criminal Procedure adopted in 1290 AH from the Code of Criminal Procedure of 1808 AD and by combining it with the system of legal evidence, he built a system of two systems based on the knowledge of the judge. This article examines the views related to this issue with a descriptive-analytical method and a comparative approach. The result was that a written contract, like French law, was only effective at the probation stage. Filing a lawsuit and not anticipating effective enforcement guarantees in this regard reinforces the latter proposition. Evidence of labor relations claims is provided in the By-Laws of the Code of Labor Law approved in 2012 and the testimony of witnesses and oaths is not mentioned as evidence in a specific sense (contrary to the laws of the subject). In French law, the labor law has no provision for proof, and thus all reasons are admissible under civil law; this is not unlikely to be accepted in our law, given the laws of the subject and the spirit of labor law, in order to protect the working class.

Keywords: Lawsuit, Labor Law, Iran, France

Introduction:

Humans are civil-born beings who have to interact and live with each other in order to meet their needs and repel harm, so they must have a constant relationship with each other. In the course of these communications, consequently, each person has rights and duties, the observance of the rules and regulations of which is obligatory in order to protect the society from chaos. In this process, sometimes the rights of individuals are in conflict with each other for various reasons, in this regard, in order to protect privacy and respect for rights and prevent the violation of rights, human society has drawn rules and regulations from the beginning that govern their relations in the form of custom and social practice. With the expansion of these communities and its development, the codified law has finally been regulated in its current form. Accordingly, jurisprudence provides order, peace, stability and security in their community and in the shadow of this science and the practice of it, other sciences have grown and flourished, because the special task of the science of law is to establish installments and justice. Litigation in the general sense is the policy and general method that the courts use as the official source of grievances in the position of resolving disputes and litigation and in a specific sense, it is a similar set of binding rules that judicial authorities apply in similar cases. These rules are often used and cited by judges, lawyers and jurists (Etedal, 1379: 10).

In principle, filing a lawsuit and initiating a trial requires that a person claim a right to himself against someone who denies that right. But the claim of proving the right is useful when it is proven (Sharifi and Rafiei Moghadam, 1392: 26). Also in written legal systems such as France, which have a major focus on written regulations (Carbonnier, 1991: 194). And in secure legal systems, such as the United Kingdom, litigation is considered legal. Extraction and dissemination of inconsistent rulings and lawsuits have a long history in the United Kingdom, and in France, despite being the main source of law in Iran, this has been done coherently for about two hundred years (JESTAZ, 2005: 47). The study of these legal systems has been the main development of law in recent centuries (Babaei, 1392: 2).

Background research:

Maghsoudipour and Allah Agah (1398) have conducted a study entitled "Reasons for Proving Civil Lawsuits in Iranian, Egyptian and French Law". The present study examines the reasons for proving civil lawsuits in Iranian and Egyptian law. The discussion of evidence is one of the most important issues in civil procedure, which has not received much comparative attention. What proves the subject of the lawsuit can be considered as a reason, and it is the duty of the litigants to prove this issue? The main question that is raised and examined in this article is how the reasons for proving a claim in Iranian civil law can be evaluated in comparison with the law of Egypt and France? In other words, what are the reasons for proving civil law claims in Iranian, Egyptian and French law? The present study is a descriptive-analytical study using the library method to investigate the question. The results of the research indicate that in Iranian law, such as Egyptian law, confession, written document, testimony and oath are the most important evidence to prove civil lawsuits. The civil law of Egypt and Iran is largely influenced by the law of France. This makes the evidence in civil lawsuits most similar in the law of the three countries. Abadi and Idrisian (2016) have conducted a study entitled "Comparative study on the structure and system of labor justice in Iran and some European countries." The regulation of labor-employer relations is one of the most important and effective actions of governments in the social, economic and cultural spheres of any country. In this article, the labor justice system in several European countries based on the four axes of independence of labor authorities, the competence of these authorities, the mechanism envisaged for conciliation between the parties before entering the court, Also, the number and quality of labor judges in terms of familiarity with the knowledge of law and specialized and trade union issues, has been examined, carefully in international documents, the existence or feasibility of the existence of positive points that we have reached in this research, we examine the structure of labor proceedings in Iran. Yeganehnejad and Ravanan (2016) have conducted a research entitled "Study of extradition in French law". Return of the lawsuit means the withdrawal of the lawsuit or withdrawal from its effects by the plaintiff with the conditions stipulated in the law. In the rules of civil procedure of France, first according to the old court code approved in 1806. Then, according to the new Code of Judicial Procedure adopted in 1975, the issue of extradition is accepted. A general comparative comparison of the legal establishment of extradition in the two legal systems of Iran and France shows that the French regulations in this field are more complete, which leads to the correct inference of the judge from the issue and the application of the law on disputes. But in our country's law, extradition is included only in the form of Article 107 of the Code of Civil Procedure and only the existing judicial procedure can be responsible in cases of disagreement and ambiguity and in most cases, it does not have the necessary performance guarantee. Therefore, in the present study, we will examine the extradition of a lawsuit in French law. The research method is a descriptive-analytical method taken from - valid library resources and documents that will be finally analyzed. Daneshvar (2017) has conducted a study entitled "Effects and rulings of temporary obstacles requiring the resumption of litigation in civil proceedings." The Code of Civil Procedure (whether past or present) introduces three methods of defense, which are mainly considered as important tools in hand and with their help, a vote may be cast in his favor. These three methods are: 1) objection, 2) designing one of the obstacles to the investigation, 3) substantive defense. Nevertheless, none of the concepts mentioned in the Code of Civil Procedure have been properly defined and separated from each other. In this research, we have examined the effects and rulings of temporary barriers requiring the reopening of litigation in civil proceedings. In this regard, it can be said that an objection is a means that is usually read in order to obstruct, temporarily or permanently, the process of litigation or the formation of a struggle on the principle and nature of the claimed right, in order to temporarily or Always seeks victory. A set of objections, if accepted, creates a temporary impediment to the litigation, meaning that, once the cause of the objection is eliminated, the same litigation can be rescheduled or if it is accepted, there is no need to re-file the lawsuit, so the meaning of the temporary obstacle is an obstacle that can be removed and it is possible to resume the lawsuit, despite the rejection of the agreement, or continue the same lawsuit by accepting and resolving them. Some objections, if accepted by the judge of the court, create a temporary impediment to the proceedings. Nazari and Hosseinpour (2015) have conducted a study entitled "Competent authorities to handle the claims of workers and employers and the procedure of these authorities." Labor law outlines easy ways to protect workers' rights which is explicitly provided in Article 157 of the Labor Law, workers can easily complain to these authorities and prevent their rights from being violated. Workers' Inalienable Rights Article 34 of the Constitution recognizes the inalienable rights of every individual and anyone can go to the competent courts to sue. All people of the nation have the right to have access to such courts and no one can be barred from the court to which he is entitled by law. Workers also make up a large part of the country and have the right to go to the competent authorities to exercise their rights and sue. But what are these competent authorities and where are they formed? According to the principle of separation of powers, litigation and dispute resolution are the responsibility of the judiciary. Article 61 of the Constitution in this regard states that the exercise of justice is by the courts of justice, which must be conducted in

accordance with Islamic standards and to settle disputes and protect public rights and to promote and administer justice and establish divine boundaries.

The concept of litigation in Iranian and French law

Article 1613 of the Journal of Al-Ahkam also defines the lawsuit as follows: A lawsuit is when someone claims his right from another to the ruler, called the plaintiff and the defendant. And in another definition it is said: A lawsuit is a specific claim or what is on a certain obligation or what the result is one of the two that is legally valid and does not reject the custom. There is no definition of a lawsuit in the laws of Iran. Article 34 of the Constitution states that litigation is an inalienable right of every individual. In the next principle, he spoke about the parties to the lawsuit, but did not define the lawsuit and the lawsuit and their differences. The Code of Civil Procedure, although it mentions the word lawsuit in several articles, but he has not defined it. Dr. Ahmad Matin Daftari has defined the lawsuit as follows: "A lawsuit is an action that is done to establish a right, that is, a right that has been denied or violated" (Matin, 1378: 209). Professor Langroudi also defined the lawsuit as follows:

A) It is called a dispute over a certain right.

B) The claim of the plaintiff that the lawsuit is called a specific meaning.

C) The sum of the claim of the plaintiff and the defense of the plaintiff against which the lawsuit is called general" (Langroudi, 1372: 290).

Dr. Katozian has also defined the lawsuit in this way. A lawsuit is a right according to which individuals can go to court and ask an official to protect their rights against another through the implementation of the law "(Katozian, 2001: 117). Dr. Abdullah Shams has said with further investigation, "Lawsuits have been used in three different senses:

First, the lawsuit is the legal ability of the claimant to infringe or deny the right to refer to the competent authorities in order to enter or not the claim and the order of legal effects.

Second: In some regulations, a lawsuit has the meaning of a dispute and dispute that has been raised in a judicial authority and has been or is under consideration. The lawsuit, therefore, is settled in this sense. That a claim has been made in the first sense (legal right to act) and the right holder has exercised it and is subject to legal review. Second, in some cases, a lawsuit is used to mean a claim, which is a claim that has not been raised in a judicial authority. or a claim that is raised during the trial as a subordinate matter "(Shams, 2001: 311). It seems that the first definition is the definition of the right to sue and the second definition is the definition of a lawsuit in the sense that is used in civil proceedings. In French law, too, there is disagreement over the definition of a lawsuit, and its meaning is intertwined with concepts such as the right to sue, judicial review, claim, and request for a hearing (CAYROL, 2003: 2). And there is disagreement about that. However, Article 30 of the French Code of Civil Procedure defines a claim as follows: "According to the plaintiff, the claim is that the claim is heard by a judge in order to prove or disprove it, and for the other party, the claim is to dispute the basis of that claim."

The definition of the French Code of Civil Procedure is closer to the truth than a lawsuit, because the above definition has seen the dispute from the perspective of both parties to the lawsuit, because in fact the plaintiff denies the existence of such a right. This definition is similar to the opinion of Islamic jurists about the claimant and the denier. Now, according to the above definitions and with regard to the elements of the lawsuit, which is the claim, the defendant, the subject of the lawsuit and its aspects, the lawsuit can be defined as follows. A lawsuit is a personal referral to the courts of justice and a claim of a right by him against another in a legal direction and notification to the defendant and the beginning of its proceedings in court (Hormozi, 1394: 14).

Evidence of claim

Evidence and reasons are both plurals in the language of greyhounds, which indicate the singularity of evidence, reason and singularity of reasons (Dayani, 2007: 3). In another sense, the reason is given for the weight of "Fa'il", in the word, from the article "Dal, Yadl, and Della" and in the meaning of the subject, it means a guide and something that is used to prove something. (Zamakhshari, 1992: 193). The reason is also given in the meaning of "guided to that thing" (to the thing and against) and they have interpreted the arguments and proofs in the sense of argument and what causes guidance. Dehkhoda Dictionary also takes the reason to mean guide, leader, adviser and representative way. Also, the complete Persian culture has brought it to mean witness, guide, sign and also what is used to prove something. Using the same concepts, reason can also be interpreted as "representative" or "representative" (Shams, 1389: 28). Regarding the legal concept of reason, definitions have been proposed by some jurists, some of the most important of which are as follows: "Evidence of a claim used in the judiciary and can prove the claim of the plaintiff." In the Civil Code of Iran, there is no definition of the reason, but in Article 1258 of this law, the evidence of the claim is mentioned. Of course, Chapter 10 of the Code of Civil Procedure states the reasons and Article 194 states in this regard: "Reason is something that the plaintiffs cite to prove or defend the lawsuit."

Evidence in Iranian law

In labor procedure, like civil procedure, principles and rules prevail (Taheri, 1394: 89). Which sometimes causes them to differ from each other. Article 52 of the Civil Code lists the reasons for proving the claim and refers to confession, documents, testimony, UAE and oath. Reasons permitted by the Code of Civil Procedure include confession, documents, testimony, site inspection and local investigation, expertise and oath. In the field of labor relations, Article 82 of the Rules of Procedure of the Rules of Procedure considers the evidence to prove the claim, including confession, documents and the UAE, respectively and has considered the testimony of witnesses as a matter of fact. The by-law repeats the provisions of the Civil Code and the Code of Civil Procedure, and in most of its articles there is no new or special provision. Therefore, the objection of repetition is included in it, one of the characteristics of the new laws is that in addition to being public, it is general and binding (Rasekh, 2006: 21). It is necessary to avoid any repetition. However, the bylaws do not have this feature, and it would have been better if only special rules had been laid down in relation to the specific principles of labor procedure. Another objection is that according to Article 138 of the Constitution, the provisions of the by-laws should not contradict the text and spirit of the laws and the fact that testimony is not considered as an oath does not prove that it contradicts the philosophy of supporting the working class.

How to file a lawsuit in labor dispute resolution authorities

Settlement of labor disputes between employer and worker or trainee resulting from the implementation of labor law and other labor regulations, internship contracts, workplace agreements or collective bargaining agreements. In the first stage, it works through direct compromise between them or their representatives in the Islamic Council and if the Islamic Labor Council is not in a unit, it will be resolved through the Workers' Union or the legal representative of the workers and the employer. Of course, in case of non-compromise, the dispute resolution and resolution boards of Article 157 of the Labor Law will be considered and resolved, which are known as the boards of diagnosis of the Ministry of Labor.

Disputes between the worker and the employer can be raised in the mentioned reference if the following conditions exist:

1. Due to the implementation of labor law and other labor regulations, internship contracts, workshop agreements or collective labor agreements
2. No compromise is reached between the parties. There are two stages of review and review in these authorities, the initial stage of which is in the Board of Recognition and the stage of review is in the Dispute Resolution Board. Both authorities are specialized administrative authorities and are considered to be subordinate institutions of the executive branch. In fact, these authorities are part of the organizational structure of the government body, which has the inherent competence to handle some of the people's disputes with the government. But, as we shall see, the courts of justice are at stake to enforce the rulings of these authorities. Decisions of the Appraisal Board In cases where the Appraisal Board comments on whether the dismissal of a worker is justified or not, the said authority will issue a decision on the right to arrears of work if the dismissal is not approved. If, at the request of one of the parties and with the approval of the Board, the decision is conditional on obtaining an expert opinion, the Board shall declare the deadline to the beneficiary by setting a deadline after paying the prescribed fee, the matter is referred to an expert. At the end of the hearing, the panel shall proceed to vote unanimously or by a majority. Of course, if there is a minority opinion, this opinion will also be mentioned in the minutes (Public Relations of the Cultural Deputy of the Judiciary, 1397: 6).

Evidence of litigation in labor relations

Due to the special nature of the disputes between the worker and the employer, special references in the labor law have been found for this purpose. The special features of this dispute affect the method of handling and the nature of the reviewing authority. In this regard, the disputes that have occurred in most cases have an individual aspect, and in many cases, litigation is also done by the worker and sometimes in such a way that there is no difference in the aspect of legal and judicial litigation; That is, it does not mean that the clause of the contract or the provisions of the law has been ignored, but the dispute is collective on the one hand and arises from a conflict of interest on the other (Iraqi, 2016: 362).

The labor law considers the handling of any individual dispute between the worker and the employer to be a matter for the dispute resolution authorities. Mentions compromise as the first step in resolving disputes, without specifying a specific mechanism in this regard. Thus, according to Articles 139, 142 and 143 of the Labor Law, some authors consider the resolution of collective labor disputes to have four stages and some others, according to Article 157 of the Labor Law, have not considered the labor authorities competent to hear collective litigation. However, according to the provisions of Chapter 7 of the said law, including Note 1 of Article 139 and the above-mentioned articles, as

well as Article 2 of the Rules of Procedure of the Rules of Procedure, such disputes are deemed to be settled in the labor courts if they are not resolved through compromise. Ghobadi, 139: 85).

Evidence in French law

French law has led to the complete freedom of all evidence (Camerlynck, 1968: 167). Because the labor law of this country does not have any special provisions regarding the evidence in employment contracts. Therefore, all the evidence provided in the civil law can be used in labor proceedings (godard, 1973: 155). Therefore, in terms of inequality of the parties in this contract, the use of all methods of proof can compensate for this inequality in the proof stage. It is worth noting that this freedom of the parties is not absolute in citing evidence, but other legal principles and regulations must be observed in this regard, such as privacy (tekely, 2002: 9). It has been said that in 90% of disputes between the parties, there is no written employment contract and this problem usually arises from there. Evidence to prove this relationship is kept in the workshop or company, which is under the control and authority of the employer and in some cases there is no access to them; therefore, imbalance in the trial is also visible. Thus, some believe that the use of electronic evidence can be a legal tool in the service of rebalancing contractual relationships (Ternynck, 2014: 16).

Result:

In order to support the working class and reduce cases related to verifying oral contracts and using the instruction No. 14971 of the Deputy Minister of Labor Relations of the Ministry of Labor, it is proposed to oblige employers to prepare a written contract and send an electronic copy to the relevant units. On the other hand, in line with these goals, it is recommended to permanently consider the employment relationship created, assuming that the contract is not written in view of the current situation. Just as there are such provisions in French law for the protection of workers and equality between the parties, so in the Belgian labor contract law, the same guarantee is stated in the fixed-term employment contract. Accordingly, the provision of effective performance guarantees (such as fines, non-approval of person's eligible for tenders) such as the above-mentioned instructions in violation of the written arrangement of the contract for other legal and natural persons, is also proposed. In French, Dutch and German law (except for fixed-term employment and internships), employment contracts are as satisfactory as ours, and of course, in order to achieve the above objectives, the authors of the written contract have preferred. In some countries, such as Belgium and China, the existence of a written document has been mentioned to establish a labor-employer relationship, but non-observance of this issue does not affect the establishment of this relationship. The Code of Labor Procedure has many drawbacks in terms of evidence, including the repetition of articles of civil law and civil procedure, the provision of irrelevant cases, the degradation of the testimony of witnesses to the statute, and the failure to provide an oath. This issue, in addition to being in clear contradiction with the relevant laws, is not in line with the protective spirit of the labor law; what provisions of the by-laws according to Articles 73 and 138 of the Constitution should not be contrary to the principles, religious rulings, constitution, text and spirit of the laws and general regulations of the country. Therefore, and considering that in the current situation, employers are generally reluctant to enter into a written contract with the worker in order to avoid paying insurance and other legal benefits, rejection of witness testimony and even oath (subject to the relevant terms and conditions) will be to the detriment of the worker. Thus, like French law, in order to equalize the parties in the litigation process, despite the inequality in the employment relationship, the integrity of the proof (including the certificate and the oath) is proposed in accordance with civil law.

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