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False Testimony and Oath: Reopening a Legal Case in Iranian Courts

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Abstract

In Iranian legal laws, hearing a case ends by issuing the final judgment. However, the law has provided conditions where the individuals can apply for retrial so that their rights will be protected and losses will be prevented. This means that court will rehear a case for which it has issued a final judgment. Now, each of the parties to the claim who has applied for reopening must prove the conditions of reopening. One of the conditions is proving the falsehood in the claim. Yet, the question is 'under which conditions the falsehood brings about the annulment of the judgment issued'. The present research aims to study the effects of falsehood cases in the possibility of applying for reopening and annulling the judgment issued.

Keywords: Iranian laws, Iranian courts, Witness testimony, Reopening a case.

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Introduction

Iranian codes of civil procedure begin the reopening a case with causes of case reopening in article 426. In this article the causes of reopening a case include 7 cases. The new laws have not changed significantly in this regard.

Article 426: With respect to final judgments, it is possible that one of the parties apply for reopening the case:

1. The subject of the judgment was not claimed by the plaintiff.
2. The judgment was issued much more than claimed.
3. The presence of conflict in the content of a judgment resulting from invoking to conflicting principles or articles.
4. The judgment issued is in conflict with another judgment, of the same claim and its parties, issued formerly by the same court. There is no legal cause for this conflict.
5. The opposing party of the case reopening applicant has used a trick and fraud that has affected the judgment issued by the court.
6. The judgment issued by the court is in accordance with documents that have turned out to be forged after the issuance of the judgment.
7. After issuing the judgment, some documents and papers are received indicating the legitimacy of case reopening applicant and it is proved that the aforementioned documents and papers have been hidden during the proceedings and were not accessed by the applicant.

Proving the falsehood of witness testimony and oath

In article 426 (ق.ج) introducing the witnesses and their false testimony and oath has not been stipulated independently as one of the causes of case reopening. However, article 595 (ق.ج.ف) has considered the falsehood of affidavit and witnesses' testimony and oath have been considered independently as causes for case reopening.

The question arising now is "Can introducing the witnesses and their false testimony and oath be considered as a cause for case reopening?" Before answering this question, it is better to analyze the conditions of realizing this cause of case reopening in the new French codes of Civil Law.

A. The conditions of realizing this cause in French law:

This cause of case reopening did not exist in French codes of Civil Law and was first articulated in a 595 four-article section as follows:

“If the court judgment is based upon an affidavit, the witnesses’ testimony or oath the falsehood of which is proved later through juridical decision”.

Articulating this cause in the new French codes of Civil Law indicates that the lawmaker has intended to prioritize justice over the validity of judgment by extending the causes of case reopening. Nevertheless, reopening a case must be kept as one of the extraordinary ways of complaint and its enforcement scope must be limited to conditions which has been mentioned in other causes of reopening a case.

However, affidavit, the witnesses’ testimony and oath must have a decisive effect on the judgment issued by the court; if the turn out to be false, a new decision is made by the court. When the judgment enjoys collateral estoppel, the falsehood of affidavit, the witnesses’ testimony and oath all need to be proved in accordance with judicial decision (recent section of article 595 ق.ج.ف).

Affidavit is a written form of testimony. The conditions under which the affidavit is valid have been stipulated in article 202 ق.ج.ف. The value and validity of the affidavit depends on the judge’s opinion who will apply hearing on the merits. Affidavit is considered as a written document. Proving the falsehood of affidavit can be considered as a cause for reopening a case.

Proving the falsehood of affidavit, and witnesses’ testimony and oath can be done in civil courts ad even criminal courts. Proving the falsehood of oath is also one of the cause of reopening a case providing that the falsehood of oath has been proved in accordance with a judicial decision. However, proving the falsehood of oath seems to be in conflict with what is articulated in article 1363 of French Civil Law. Since in the aforementioned article the lawmaker has stated “the opposing party can not prove the falsehood of oath”. For solving this conflict, some lawyers have stated that article 1363 of Civil Law just includes only decisive oaths of the claim[4]. However, the

[4] Hayayti, Ali Abas, *Reopening a Case*, p. 127

injured party of the false suppletory oath can apply for reopening a case by proving the falsehood of what has been issued either by raising action in civil courts or through criminal complains in criminal courts.

With respect to a decisive oath taken falsely, the injured party can still turn to criminal prosecution. On the contrary, the regulations of article 1363 of Civil Law prevents the injured party of the decisive oath from proving the false oath in civil courts. However, the regulations do not prevent the injured party from bringing a criminal prosecution against the person who has taken a false oath. Nevertheless, the criminal prosecution must be done by the prosecutor. The limited interpretation of article 1363 has led the judicial procedure to this. The plaintiff's application, being the victim of false oath, to initiate a civil action in criminal courts will be denounced.

However, if a person who has taken a false oath is convicted after filing a complaint by the prosecutor, the regulations of the four-article section of ق.ج.ف allows the injured party of the false oath to apply for reopening the case in civil courts against the judgment issued.

B. The evaluation of this cause in the Iranian codes of civil procedure:

As it was stated earlier, the aforementioned cause has not been considered as one of the causes of reopening a case. The reason behind this is that Iranian codes of civil procedure law is highly affected by the old law of French codes of civil procedure. The Iranian codes of civil procedure law (1939) is mainly the translation of the old law of French codes of civil procedure.

Since the old French law has not mentioned this cause as one of the cause of reopening a case, the Iranian lawmaker has not dealt with this cause either in 1939. However, with the amendment provided for the Iranian codes of civil procedure in 2000, it was expected to pay attention to the new law of French codes of civil procedure.

Nevertheless, studying all of the changes made in the new law of codes of civil procedure indicate that the lawmaker has not noticed the new law of French codes of civil procedure. The aforementioned case is one of those issues which have been neglected by the lawmaker. With respect to the issue that 'why revocation of testimony has not been included as one of the causes for reopening a case in codes of civil procedure law' Dr. Katouzian has stated that:

> We all know that when codes of civil procedure law was passed testimony used to enjoy a limited scope and it was of paltry validity, in such a way that in all main claims the contracts were documented by ordinary formal documents. Therefore, this might strike you that section 6 has been written according to prevalence and now that testimony is considered as valid as documents, justice requires that forgery of document and falsehood of oath be subject to the same judgment.

However, in answering this reasoning he adds:

> This reasoning is surely not decisive. One can reason that reopening a case has nothing to do with the scope of testimony. Therefore, although the validity and scope of testimony have extended, the judgment of section 6 has been reiterated. However, this doubts and concerns are quite serious and the judicial proceeding must address them decisively.[5]

If such an argument is not correct, can proving the falsehood of testimony or oath be regarded as an evidence of trick and fraud in the six-article section of 426 ق.ج or not?

Some lawyers have stated: with regard to our domestic law, since the lawmaker has identified trick and fraud (if done by the opposing party) as the causes of reopening a case and as false oath has not been announced, independently, as a cause of reopening a case, one can conclude that false testimony, if it is performed in collusion with one of the parties, is considered as an evidence of trick and fraud.

However, some other lawyers maintain that false oath is regarded just as other false statements made by the parties, and thus it is not regarded as trick and fraud which are the causes of reopening a case[6]. This has been answered:

> The subject of oath is fundamentally different from other statements made by the parties. Since the subject of oath relies upon taking an oath, binds the court to consider it as true, and judge thereon. While other statements made by the parties, if considered as claim, can be referred to only when they are grounded on evidence and proof. Thus one must admit the false oath is quite distinct from other statements made by the parties, and thus if they are proved, they can be considered as an evidence of trick and fraud.[7]

[5] Dr. Katouzian, *Proof and its Reason*, vol. 2, pp. 29-30.
[6] Dr. Matin Daftari, *Codes of Civil and Commercial Procedure*, vol. 2, p. 524.
[7] Dr. Shams, *Codes of Civil Procedure*, vol. 2, p. 473.

In terms of principles, it seems that as long as there is no decisive reason for including false testimony or oath as an evidence of trick and fraud, one can not extend the scope of the causes of reopening a case through an extended interpretation of the six-article section of 426 ق.ج. Exceptional case reopening relies upon the principle of 'certainty of judgments', and the exception must be applied in cases made explicit in the law. Identifying that false testimony is an evidence of trick and fraud is a question of fact, and proving questions of fact in any action is done by the judge who will apply hearing on the merits.

It is worth mentioning that in the codes of criminal procedure passed in 1998, the lawmaker has introduced one of the causes of reopening a case as such "forged documents and false testimony of the witnesses (being the ground for the judgment issued) are proved". Therefore, it is observed that in the codes of criminal procedure proving false testimony is regarded as one of the causes of reopening a case. In terms of probative power, codes of criminal procedure are not different from codes of civil procedure. The witnesses' testimony is an evidence of probating a claim in both civil and criminal matters. This lack of conformity in the aforementioned law indicates that codifiers of both laws codified them with two different perspectives.

Conclusion

After investigating both French and Iranian civil codes regarding false oath, a question arises that "whether confession nullity probation can be regarded as a cause for accepting the case reopening? It can be said that this has not been considered as one of the causes for reopening a case in both Iranian and French codes of civil procedure. The reason is clear: confession nullity is either due to confessor's making mistakes in confessing or his being under coercion and duress. As for the first case, i.e., making mistakes in confessing, we can say that the lawmaker has predicted a normal procedure to administer justice for the claimant. If it is beyond this, it will disrupt the judicial process system; when the judgment takes effect, accepting case reopening is ungrounded with regard to a judgment documented by that confession.

However, even if confession has been extract under external factors such as coercion and duress, it does not guarantee the acceptance of reopening a case; since the defendant could have applied all probation reasons and lawful protections to administer justice and probate confession nullity in the court before the judgment takes effect. If he does not use the aforementioned protections,

he has acted against his own interest. Thus, accepting confession nullity as one of the causes for reopening a case does not seem correct.

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