World Journal of Environmental Biosciences

Available Online at: **www.environmentaljournals.org**

Volume 6, Supplementary: 60-64

ISSN 2277- 8047

Judicial of Subrogation in Civil Procedure Law of Iran

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ABSTRACT

A judicial subrogation means giving referral to a court for some particular actions. It should be stated that the granting of a judicial subrogation is mandatory and requires several conditions. Intrinsic jurisdiction of courts, the necessity of giving referral only from a higher authority or similar authority, the impossibility of subrogation of judicial powers are among these conditions. The judicial subrogation within a country is issued in the form of a numbered agreement. The court that gives judicial referral cannot determine the branch of the vice court, even if the court of origin is the provincial court of appeals. judicial subrogation in the international arena requires treaties or mutual actions.

Keywords: *Judicial Subrogation, Capacity, Jurisdiction, Donor Subrogation, Performance Subrogation.*

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INTRODUCTION

Issue) conditions over Jurisdiction of the court which gives referral
Discussion) Principle of jurisdiction of the court of the main dispute
Clause 1) Reviewing the conditions of intrinsic qualifications

One of the issues that has been addressed in the case of a judicial referral is the issue of intrinsic jurisdiction of the court. The majority of lawyers have accepted this opinion. Some of them believe that "In the judicial referral, observance of the rules of intrinsic jurisdiction is mandatory, so general court can not give referral for revolutionary court and vice versa (Tavakkoli, 1394). Some others believe that referral can be given only to a local competent court not to any courts there. For instance, the military and revolutionary courts have no jurisdiction for public courts' cases; therefore, it will not be appropriate for these courts to investigate what is in the jurisdiction of the public courts.
In other words, this principle must be respected and it is assessed on the basis of this fact that whether the granted case is within the jurisdiction of another court is or not. The abovementioned issue means that public authority cannot give its authority to specific courts at any means. But the question is, can an exceptional authority give referral to a public authority? Although at first glance, you might say "yes" to this

question, public courts can only accept the referral if it is stipulated in the law (Shams, 1390). Article 24 of the Code of Administrative Court of Justice Act (1385) says: , "the prosecutor's office may do any investigations or necessary actions or request it from authorities of the judiciary and administrative authorities, or represent it to other judicial authorities. These authorities are required to carry out the investigations and actions required within the deadline set by the court. Violation of this article is subject to administrative or disciplinary punishments. Judicial proceedings also require the condition of intrinsic jurisdiction, and with this, it is impossible for a public court to give referral to the Revolutionary Court or Military courts (Zera'at, 1383).

Third Clause) Reviewing the condition of local jurisdiction
Unlike intrinsic qualifications, there is no objection to local jurisdiction, and essentially the philosophy of judicial referral is that a judicial authority outside of its jurisdiction can collect the required information through representing another authority. Accordingly, the lack of local jurisdiction is not enough for not accepting legal referral.

Second discussion) Reviewing the condition of the second degree court
In each class of courts, there are some levels, for example, legal trials are divided into primitive trials and appeals. The same is true for criminal and administrative courts (Rastegar, 1365). Therefore, the degrees of the courts should be considered when determining the intrinsic jurisdiction of the court. Ranking of the courts is so important. And when the verdict of a court is objected, a higher degree court deals with it. It has also authority over it, for instance in the event of disagreement between two primitive authorities, the court of appeals of the province decides which authority must deals with the case. Also, according to the Code of Civil Procedure, the nature of any lawsuit should be reviewed at two levels. A twofold examination is part of the customary rules, and failure to comply with it will invalidate the ruling. And also, in cases where the legislator exceptionally has chosen one-step examination, this rule is an order, and no one can turn it into a two-step process. So we can consider a Lower Court and a Supreme Court. In terms of the hierarchy of courts, courts are split into lower and supreme

courts. A lower court is a court which its decisions are monitored and controlled by a higher authority (i.e. a supreme court).

According to this definition, the court of first instance, which at first deals with a case, compared to an appeal court is considered a lower court and the appeal court is considered a supreme court. Supreme Court of the country is considered a supreme court compared to both of these courts and they are lower courts to it (Hayati , 1390). The Supreme Court has both the Supreme Court and the two Supreme Court courts, and both the Supreme Court and the Supreme Court are the Tali court.

These terms and conditions apply to all ongoing proceedings. But in relation to the prosecution, the question arises as to whether courts can give referral to any another courts, regardless of their degree? Abdullah Shams has stated that "although it is not specified in the law, the grade of the court must be higher than or equal to the grade of the representing court". This view has been defended by some other writers (Nobakht, 1393). Indeed, the answer to the question is a kind of ambiguity. The ambiguity arises, on the one hand, from the fact that, in any case, it is imperative to observe the order of the judicial authorities and the hierarchy; on the other hand, the judicial referral does not deal with the nature of the case so no problem can arise from this. In response to the above question, although it is not possible to give a decisive answer legally, it seems that courts can only give referral to same level or lower courts. The higher status of the authority prevents it from obeying what is in the scope of a lower authority. Therefore, the court of first instance can not give referral to an appeal court, but in the opposite direction, the appeal court can. The judicial procedure has also accepted this view. The Legal Commission of the Judiciary Meetings answered the question if the Provincial Court of Appeal gives referral for a local examination and investigation of a subject outside of the jurisdiction of the province whether it should give referral to a local court or to provincial court of appeal like this:

"it may refer the enforcement of the sentences to general court. However, this does not mean that it can not give referral to the district court, but in principle, the appeal court of each province will consider appealing cases in the same province, and pass investigations to general courts (Judiciary Education Assistant ,1387).

Third discussion) Reviewing the authority of the court outside the jurisdiction

Clause 1) The Court's discretion

One of the views expressed about judicial referral outside the jurisdiction is that "granting judicial referral is optional, whether within the jurisdiction or outside it," and there is no difference about it. Based on this view, the court can take action in matters beyond its jurisdiction, whether to provide a reason or the like. It should be noted that this theory is presented by a minority of the Civil Procedure Commission of the Legal Department of the Judiciary on 1343/3/20. And no lawyers and legal writers have supported it.

The second clause) The Court's lack of discretion

In contrast to the above viewpoint, another idea is that, in cases where the affairs are outside the jurisdiction, it must necessarily be done through a judicial referral.

Therefore, the magistrate, except in very exceptional cases, cannot act outside his jurisdiction. In choosing one of the two views, it must first be stated that the appearance of some articles of civil law is such as to allow the court to exercise its jurisdiction outside its jurisdiction. According to Article 250 of the Civil Procedure Law, "The conduct of a local examination or local investigation may be carried out by a prosecutor or a judge of inquiry. The time and place of the investigation should be notified to the parties in advance. If the investigation site is outside the jurisdiction of the court, the court can request the investigation from the court of that place. Unless the basis of the court's decision is a local examination, in which case the enforcement of the above-mentioned provisions should be effected by the person who issued the verdict or the report is valid for the court" . The majority of the Civil Procedure Commission of the Legal Department of the Judiciary on 1343/3/20 was this: "according to Article 47 of the Civil Procedure Code (Article 290 of the new law), on Judiciary referral and articles 411 and 428, if the referred court is a subset of the referring court, the referral is optional. But if that particular place is outside the jurisdiction of the court, granting a judicial referral is necessary.

Judiciary's legal department has issued a similar opinion. (Karkheiran, 1392) Most importantly, the Verdict No. 1523_ 12th of the November 1313 of Supreme Court of the Judiciary, as well as the verdict NO. 1525- 15th November of 1313 of Supreme Judicial Council have violated the conduct of local examination and investigation outside of the jurisdiction.

Part 2) the terms of referral

First discussion) Lack of Supreme Court Trial Condition

Clause 1) is the concept of stewardship condition

from a lexical point of view, stewardship means "doing something in your own hand, doing something in your own hand, doing something", and the steward means "the manager and the agent, the worker, the broker," is interpreted.

The concept of the stewardship of the court in the judicial process has also been taken into consideration.

Following the judicial meeting of the Bostanabad Judiciary, in response to the question "What is the condition of the court's supervision, is it not required in Article 290of the Code of Civil Procedure of the Public Courts and the Revolution in Civil Matters?"

Three theories are presented as follows:

Majority Theory: "In accordance with Article 288, and the last part of Article 250of the Civil Procedure Act, the Oathyan swears and places the local examination and investigation, which is the basis for the issuance of a sentence, through the grant of judicial counseling by another. The term "stewardship of the court" in Article 290of the above-mentioned law only refers to the issuance of a ballot, that is to say, the prosecutor can not request the issuance of a ballot in the form of a grant on behalf of the presiding authority, but personally and obscurely, Make"

Minority Theory: "The legislator's purpose of the word" stewardship "is that only the issuing authority can personally decide on such matters, including the oath that can not be delegated or the issuance of a ruling based on local examination. The local investigation into which the verdict is based can not be ruled out and done by another" .

The Judicial Commission Commission's theory: "In some cases, the legislator considered it important to consider the issue of stewardship of the court, including Article 250of the Code of Civil Procedure and the Civil Procedure Revolution, and the note under Article 43of the Public Procurement and Revolutionary Courts In criminal matters ".The cases in which the reason given is the basis of the vote, which is the only reason given, can be considered as one of these.

Clause 2) instances of the necessity for stewardship

A. Grounds for the court's verdict

1-Testimony of witnesses

In some cases, only one reason may be the only cited reason for the parties to the dispute.

In this case, they consider the reason given as the basis for the court's decision.

For example, the only document provided may be the basis for voting, in which case the court order will also be violated in the event of invalidity of the basis of the ballot paper.
In the event that the sole basis for the testimony is the witness, there will be no judicial authority unless the case report is valid (Hosseini, 1380).
Note to Article 354of the Civil Procedure Act provides that "in cases where the basis of the court's decision is only the testimony of witnesses..., the judge will issue the vote unless the case report is valid.

2- Local Research and Examinations
Similarly, local investigation and local examination are the sole cause of the parties to the dispute, in other words, the basis for the verdict The appointment must be made by the issuing person or, in exceptional cases, the report is valid.
Article 250 of the Civil Procedure Law stipulates that "the conduct of a local examination or local investigation may be carried out by a prosecutor or an investigating judge.
The time and place of the investigation should be notified to the parties in advance. If the investigation site is outside the jurisdiction of the court, the court can request the investigation from the court of the place.
Unless the basis of the court's decision is an examination or local investigation, in which case the enforcement of the above-mentioned provisions should be effected by the person who issued the judgment or the case report is valid. "
In accordance with Article 354, it is also anticipated in the review stage.
Of course, the critical point to be made here is that the execution of the local examination and local investigation by the magistrate, although it is considered to be a positive factor in the accuracy of the hearing, but at present, given the relative lack of jurisdiction, the judge can at a speed It has a negative effect on the proceedings.
In the legal procedure regarding Article 354, the question arises as to whether, in the event that the District Court of Appeal requests outside the jurisdiction of the Provincial Judiciary to grant a place to investigate a place or examination, the district court should give notice to the local court or the district court of appeal?
In response to this question, different views have been presented.
One view is that, in view of the use of the term "local court" in Article 354 of the Civil Procedure Code, the provincial court of appeal may appeal to the General Court or the Provincial Court of Appeal, and the order of the local court, from the court of first instance and the appeal of the province And the jurisdiction of the provincial court of appeal is throughout the province. Therefore, if the case is intended to be outside the provincial capital of the province, the provincial prosecuting court may also enforce it.
The court is a primitive one, because in the law establishing the general and revolutionary courts of 1994, the word of the court of the slave was general court order, unless the appeal was added to the court in the name of the court, where the court of appeals of the province there and so-called here dissuaded It is common to the person.
The third point has been that if local investigation and examination is to be carried out in the provincial capital, then the provincial court of appeals should be able to appeal to the general court and, if outside the provincial governorate, it can be nominated only to the general court. This is because the provincial appeal court is located in the provincial capital and can not be sued to the court outside of the place of detention. This view is provided by the minority. However, the Legal Commission at the Judicial Council Meeting in Shiraz, July 2002, stated that "if the review court determines the local examination and local investigation and the place is outside the jurisdiction of the provincial court, it may execute the sentences passed to the General Court This does not mean, however, that it can not bring the property to the provincial court, but, in principle, the appeal court of each province will consider appealing cases in the same province and, if issued by the investigation or examination of the site, will bring it to the public court The place of occurrence of the property is delegated, however, the place of execution may be.
It seems to be advocating from a recent point of view, because, as we have said, courts should not ignore the rules of the jurisdiction, on the other hand, compliance with the hierarchy is also required.
Therefore, the Provincial Court of Appeal may appeal to the Provincial Court of the Province or its appeal court.

3- Oath
The oath is also one of the reasons why a judicial referral can not be heard if the reason is based on the ballot, and should only be heard by the judge.
Of course, it should be noted that the law has been silent in this regard. Article 288 of the Civil Procedure Law states that "oath must be heard before a court hearing.
If the perpetrator is not able to appear in court due to a justified excuse, the court will, as the case may be, determine another time to take an oath, or the court judge will appear before him or to another judge who will swear allegiance to him and face Sends the parliament to the court and to issue a ruling thereon. "
As it is clear, the legislator does not state, in the case of other materials, 246, 250, and 354, the state in which the oath is based on the ballot, however, by obtaining the unity of the criterion and the existence of the principles previously mentioned, one can express The possibility of judicial recourse should not be accepted in the event of a vow of a ballot.

B) Reason for the confession
One of the reasons why the prosecution should be ruled out is the reason for the confession.
Why should this be sought in the nature of confession?
In fact, "confession is made to the seat of authority, and it is not something that has been foreseen in advance by the judge to call for a hearing."
In other words, confession is an accidental and unexpected event that a person may do in any case for any reason at any given time.
Therefore, unlike local research or field examination, which can be arranged for it already, or testimony of the witnesses, which is the reason for the incident, including the contract, in the current situation, there is no reason to confess these characteristics, and accordingly The basis for the prosecution does not make sense (Saffar, 1379).

Second discussion) Impossibility of Judicial Opportunity
Clause 1) The concept of judicial authority
The concept of authority or judicial action is not defined in the law of civil law, nor in books and legal writings, between jurists in a particular and independent manner.
The reason for this may be its obviousness or perhaps the unnecessary need to be put into practice.
In one sense, judicial action can be defined as "court decisions and actions in relation to the lawsuit or cases brought before the court by the parties".
But as it is clear, the meaning is very general and involves almost every act and option by the judges.
It seems that the concept of judicial power should be "a matter which has been delegated to each judge in respect of the occupational and judicial affairs, which is of a personal nature, and is reserved exclusively to the same judge in the case before

it for the purpose of issuing the ballot and to specify It's the final assignment" .
In fact, when other cases are referred to one of the court judges in relation to other circumstances, the matters necessary for hearing and issuing a judgment are only available to the same judge and irrevocable.
Conducting a hearing, hearing the explanations and statements of the parties, evaluating the actions taken, as well as issuing judgments in each of the foreseen powers of the judiciary, as the case may be.

Clause 2) Examples of judicial powers
A) Conduct a hearing
"A hearing or a hearing is a formal meeting with the presence of a judge or a panel of judges at the time and place specified in the notice communicated to the parties and their lawyers (Bahrami, 1392).
It is also stated that the hearing in the term of the meeting appointed by the office of appointment of the court is scheduled and the time of the meeting is communicated to the parties to the dispute or their lawyers, and the parties to the dispute with the previous invitation can be heard to attend the hearing Or submit a bill, or their lawyers will be present at the hearing, in order to resolve the dispute and the matter that is in dispute.
It should be stated that after receiving the case from the referral authority, only the same judge has the power to comply with the other conditions with respect to the hearing of the parties to the dispute, so he will not be allowed to convene and hold a hearing to the judge Another area of jurisdiction is the case, although a large part of the reasons are found in that jurisdiction.

B) Listening to the explanations of the parties
Certainly, in any lawsuit filed, individuals, in addition to providing evidence, also state descriptions and measurements.
It should be noted that the hearing of these cases is only by a judge and there will be no judicial probation in this regard.
The aforementioned case has also been considered in the judicial process.
The Legal Department of the Judiciary has stated that "In addition to Article 470of the Civil Procedure Code (Article 290 of the new law), the issue of the prosecution in the investigation of the reasons and the local investigation and examination of the place and the selection of experts in materials 394, 428,442and 451of the said law, and according to the aforementioned materials, the hearing does not cover the explanations and statements of the parties to the lawsuit and the granting of a judicial inquiry in that case is contrary to the principles .

C) Evaluating the provided evidence
During the judicial process, cases such as hearing witness testimony, conducting undergraduate and field examinations, and generally collecting evidence are referred to the court of the victim.
The important point to note is that the evaluation of all investigations and actions taken by the vice court in the direction of the NIP is within the jurisdiction of the court and the recent court can never bring the matter to the vice court Leave.

D) Giving a verdict (sentence)
Giving a judicial referral does not include the adoption of a judicial decision and the issuance of an order or ruling in the course of the case.
For example, if a vice court does not provide a place for execution of an application for execution of a place examination, or informants and witnesses refusing to testify, the adoption of a judicial decision in this case will not be a case of judicial review and, if necessary, He should be returned to the court to decide on the issue and, ultimately, to issue a ruling, as the case may be.
In the criminal justice area, it has also been emphasized that "the granting of a judicial probation is possible only with regard to investigative measures, but the final opinion (issuance) is not voidable in the case and should be carried out by a qualified arbitrator (Khaleghi, 1388).
The Legal Department of the Judiciary also stated in Opinion No. 7/8367of 2000/10/11that "consideration of the principle of the charge is intrinsically relevant to the jurisdiction of the jurisdiction; therefore, an opinion on the nature of the charge and the criminalization or innocence of the individual or persons who The fact that a defendant is guilty of prosecution or prosecution is not in the jurisdiction of the court and is ineligible for the jurisdiction of the court, and this is not a valid mandate .

CONCLUSION

A judicial referral means representing a court to another court for some action.
The process of implementing a presidential election requires several conditions.
These conditions will be of two kinds.
Some of them are referring to the reference.
The jurisdiction of the court, the court degree and the legal dimension of the jurisdiction are discussed here.
The other part addresses the issue of the lack of conditions for the stewardship of the court, as well as the impossibility of judicial review of such matters.
We found that, unfortunately, the Civil Criminal Code has been silent on major parts of the judiciary, which needs to be addressed in the next amendments.
One of the conditions that must be considered in the case of the prosecution is the need for the courts to have the inherent jurisdiction to enforce the claim.
We have observed that the judicial process in this regard also considers the condition of inherent qualification to be necessary, and the current situation prevents the general court from granting the judiciary to the revolutionary court or the judiciary.
One of the disputed issues is whether each of the courts can give them a point of reference that is superior to theirs, in order to carry out a case?
This ambiguity, on the one hand, arise from the fact that, in any case, it is imperative to observe the order of the judicial authorities and the hierarchy; on the other hand, there is no such nature as the prosecution of the judiciary, which has to be criticized.
In this regard, although it is not possible to give a decisive answer legally, it seems that the possibility of awarding a claim only exists from a higher-ranking reference or a reference point, in fact, although there is no substantive review in the judicial administration, However, in interpreting the rules, consideration should be given to the hierarchy of rules. The higher status of the authority prevents it from obeying what is in the scope of the reference authority. Therefore, the court of first instance can not appeal to the court. We found it necessary to grant a judicial juvenile justice. In fact, the application of Article 290 of the Civil Procedure Law, which implies the necessity of granting a presidential candidate outside the jurisdiction, as well as Article 354 of the same law, must, in the case of reasons beyond the jurisdiction of the province, be given, and, on the other hand, observance The rules of the judiciary, which are of fundamental importance and the legislator, have taken into account certain objectives, including the stability and order of the jurisdictions and the domination of the court on their claims, prevents them from taking actions outside the jurisdiction.
The judicial process is also more or less oriented towards this.
But some conditions apply to the subject.

One of these cases should be the lack of the necessity of stewardship of the court.
Stewardship means "doing something for yourself".
In fact, in some cases, the legislator has considered the issue of stewardship of the court essential in the light of the importance.

REFERENCES

1. Bahrami, Bahram (1392), Civil Procedure Code, Vol. I, Twelfth edition, Tehran, Negah Bin Publication
2. Hayati, Ali Abbas (1390), Civil Procedure Code, Volume I, First Edition, Tehran, Nashr Publication.
3. Hosseini, Seyyed Mohammad Reza (1380), Law of Civil Procedure Code in Judicial Procedure, First Edition, Tehran, Majd Publication.
4. Judiciary Education Assistant (1387), Collection of Judicial Cases of Civil Matters, Volume I, First Edition, Tehran, Javdane Publication.
5. Karkheiran, Mohammad Hussein (1392), The most complete collection of Civil Procedure Code, three volumes in just one volume, First edition, Tehran, Rahe Novin Publication.
6. Khaleghi, Ali (1388), Criminal Procedure, Second Edition, Tehran, Shahr Danesh Publication
7. Nobakht, Yousef (1393), A Look at the Civil Procedure, First Edition, Tehran, Rad No-Andish publication.
8. Rastegar Namdar, Hussein (1356), Qualification of Courts; intrinsic, Local, Relative, extra Qualification, Judicial Magazine, NO. 134.
9. Saffar, Mohammad Javad (1379), The rule of irresolvablility and its scope, Mofid Magazine, No. 22.
10. Shams, Abdullah (1390), Civil Procedure Code of Advanced Courses, Twenty-fifth Edition, Tehran, Drak publication.
11. Tavakkoli, Mohammad Mehdi (1394), Reviewing Civil Procedure Code, First Edition, Tehran, Novin Andisheh Publication
12. Zera'at, Abbas (1383), Law of Civil Procedure in Legal Order of Iran, First Edition, Tehran, Khate Sevom Publication.