International Research Journal of Applied and Basic Sciences
© 2013 Available online at www.irjabs.com
ISSN 2251-838X / Vol, 6 (8): 1105-1111
Science Explorer Publications

Interrogation in Civil Proceedings

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ABSTRACT: Nowadays with respect to the remarkable developments in the judicial system particularly in civil procedure area, the trial objective goes obviously beyond dispute settlement. By the authority granted by the legislator by virtue of Article 199 of Civil Procedure Law 2000, the civil judge has approached this goal to a great extent. This authority moderated and finally decreased gradually the well-known principle "prohibition of evidence obtainment" which had prohibited judge from obtaining evidence to discover the truth by virtue of Article 57 of Civil Procedure Law 1911 and Article 358 of previous Civil Procedure Law 1939. Furthermore, it converted the passive judge into an active judge. One can firmly state that one of the most reliable methods of investigation is questioning the litigants which is interpreted as interrogation in other countries laws. Unfortunately this investigation method has not been provided explicitly in our written laws and so it has not been elaborated by doctrine. In the Iranian justice system, interrogation does not have a clear position in civil actions due to some considerations, and despite laws of many Western and Arabic countries, no clear and precise rules have been provided in this regard. However, the only legal text existing in this regard is Article 199 of Civil Procedure Law which grants the authority of any kind of investigation required to discover the truth to the judge. This paper will investigate the concept of interrogation in civil proceedings.
Key words: civil proceedings, prohibition of evidence obtainment principle, truth discovery, interrogation

INTRODUCTION

Criminal inquest or interrogation is a known and effective investigation method for truth discovery and criminal justice. Due to the close relationship between criminal affairs and public order, there is obviously no doubt in usefulness of this method. In civil proceedings, civil interrogation does not enjoy such a value due to lack of explicit stipulation by the legislator. In fact, civil interrogation is a judicial measure based on which the judge may question the litigants or one of them regarding subject of the action and discover the truth ranging from proving or rejecting the claim.

A glance at the comparative aspect of the issue reveals that despite there is no clear and precise regulations regarding interrogation in our laws, it has been explicitly discussed in the judicial system of many Western countries like France and Arabic countries like Egypt.

In the French Civil Procedure Law, whether in the prior law known as Napoleon Code (Articles 324 to 336) or in the new law (Articles 184 to 198), this issue has been addressed under the title "Le Personnelle de parties Comparution". Another term used in the French Civil Procedure Law is "interroger".

These terms are apparently applied in all civil or criminal proceedings in the French Civil Procure Law, so there is no difference between interrogation in civil and criminal affairs in terms of word application.

In the Arabic countries judicial system, personal presence of the litigants for questioning is interpreted as "interrogation". Since Arabic countries comply with a written legal system, their laws have been inspired by the French law particularly in the civil proceeding area. Accordingly, regulations pertaining to "interrogation" in these countries have been mainly derived from "Le Personnelle de parties Comparution" issue in the French Civil Procedure Law.

This paper aims at proving the fact that evidence obtainment is not an obscene act contrary to what is thought; rather it may guide the judge towards truth discovery which is the desired cause of the civil justice system. In fact, evidence obtainment provides the stage of discovering the truth. Thus it seems that litigants' interrogation is an effective tool for court activism, i.e. truth discovery.

Part I: Concept of Interrogation

The question raised in the beginning is that what the word interrogation means.

Chapter One: Lexical Meaning of Interrogation

The research carried out regarding this word by linguist scholars reveals that it has a particular position in the political science and law. In one of the dictionaries (Khalil Jar, 1986) interrogation is regarded as an infinitive which is equivalent to interpellation in the political science. In the science of law, this word means one of the methods of interrogation by which the interrogator asks his questions and writes down the answers.

Chapter Two: Idiomatic Meaning of Interrogation

With regard to last chapter, one can say that in the legal literature, interrogation is an investigative measure undertaken by civil judge to discover the truth. In the other words, the judge has this authority to summon the litigants for interrogation in order to achieve justice. Interrogation is an investigative measure by which the court may summon the litigants and raise some questions regarding the subject of action and try to deduce the truth from their response or reaction. Hence, interrogation may result in indication, circumstantial evidence, or even confession. However, it may have no effect on truth discovery and dispute settlement in some cases.

Part II: Interaction of Judge and Litigants in Evidence Obtainment

First Issue: Evidence Obtainment in Judicial Systems

Legal rules of any society are influenced by economic, political, social, and historical developments. Also any country has its own specific rules and regulations. These rules and regulations bring about order in the society. Civil proceeding is not excluded from these rules. Consistent with necessities of a society, judges enjoy some authorities. In general, two schools have been followed by most countries in civil procedure law; beside these two, another method has been followed that will be discussed in the next issues.

Chapter One: The Role of Judge and Litigants in the Accusatory System[1]

Accusatory system that is consistent with teachings of liberal law school is based on passive role of judges. The judge does not interfere in the plaintiff and defendant action and just monitors and declares which one has proved his claim with sufficient evidence. The judge is not permitted to obtain the evidence and the litigants have the authority to raise, suspend, or stop the action (Choo, 1998).

Chapter Two: The Role of Judge and Litigants in the Inquisitorial System[2]

This system is highly influenced by socialism law school. Contrary to accusatory system, here the judge plays an active role (Nojavan, 2000, p. 64). In this method, the judge plays an important role in obtaining the evidence. Trial is preferably closed (the same, No. 216). Moreover, a superior position has been considered for judge knowledge (Akhundi, 1993).

Chapter Three: The Role of Judge and Litigants in the Mixed System

It is inferred from the above mentioned matters that the fact making accusatory system from inquisitorial one distinct is the mission granted to the judicial authority to settle the disputes. Nowadays among advanced countries laws, rarely a law is found that comply with a particular school or method; maybe the common law stance in this regard is distinct.

Contemporary legal systems have sought to integrate advantages of both accusatory and inquisitorial systems and remove their disadvantages. According to the great scholars, "there is no mixed system and its main lines cannot be specified like accusatory and inquisitorial systems (the same, No. 218, p. 123). Any system influenced by both accusatory and inquisitorial methods is regarded as a mixed system and most civil procedure systems are in the form of accusatory system inclined towards inquisitorial system and the rate of this inclination is

[1] Systeme Accusatoire

[2] Systeme inquisitoire

specified by the judicial policy of each country, degree of confidence in the judge, and consistency of order and justice (Katuzian, 2001, v.1, p. 45).

Second Issue: Passive Role of Judge in Evidence Obtainment (sovereignty of the litigants)

Chapter One: Passivism Thought Background

First Clause: Historical Developments of Passivism Thought in the Iranian Law

Obviously studying the Iranian law without studying the French law seems useless; because the French legal system has been the model of our legal system particularly in Civil Procedure Law area from the beginning of the legislation. Thus this paper will study passivism thought in terms of historical developments in the French law and then in the Iranian law which has been certainly influenced by French historical and legislative developments.
Legal developments of any country are influenced by its historical developments. Hence studying any legal entity without considering its historical aspects will be useless.

The French Great Revolution 1789 was a turning point for the legal system of this country. In the other words, its gift was penetration of liberalism thoughts (individualism theory) and emergence of passivism thought in the French legal entities.

Second Clause: Legislative Developments of Passivism Thought in the Iranian Law

As we know, studying legislative developments of a thought depends upon studying its political, social and historical contexts. On the other hand, studying legislative developments of this thought in the Iranian law involves understanding the trend of these developments in the French law which has been an inspiring model for written law member states. So, like historical developments, this paper will first review briefly the trend of these developments in the French law and then will study the issue in detail in the Iranian law.

Chapter Two: Passivism Thought Base

Studying historical and legislative developments of passivism thought reflected that the litigants are responsible for the evidence as a positive tool. Hence, passivism thought is based on the principle "prohibition of evidence obtainment by the judge".

First Clause: Concept of Evidence Obtainment

Lexical Meaning

"Obtainment" in Persian language means getting and gathering something (Dehkhoda, Dehkhoda Dictionary).

Idiomatic Meaning

Writers apply this word when something belongs to others and is not available for the related person, but finally the person attains it by a series of measures and operations.

In the legal literature, this word has been applied in the same meaning. So in the science of law, "evidence obtainment" may be defined as an act undertaken by the court; now if the court obtains the evidence which is regarded as an object owned by the litigants who have the exclusive authority of submitting and expressing it, two assumptions are conceivable: first, one of the litigants has requested it from the court, so the court "administers the evidence"; second, the court has obtained evidence without request of the one of the litigants, so in this state the court "has done it in an unauthorized manner". In this assumption, evidence obtainment is regarded as an obscene act.

Second Clause: Analysis of Prohibition of Evidence Obtainment Principle

In the Iranian judicial system, lawyers have derived prohibition of evidence obtainment principle from the first part of Article 358 of Civil Procedure Law (previous), "no court may obtain evidence for the litigants, rather it may only hear the evidence submitted or expressed by the litigants". Two points can be inferred from this article:
Court Prohibition from Evidence Obtainment for the Litigants

This point can be inferred from the first part of Article 358 of (previous) Civil Procedure Law. With regard to the generality of the legislator decree, all courts, i.e. courts that hear civil and commercial actions, are prohibited from obtaining evidence for the litigants. However it seems that prohibition of evidence obtainment principle governs only in the court of first instance and appeal court, and the supreme court that supervises lower courts and investigates procedural affairs is excluded from this principle; because this court does not investigate litigants' evidence (substantive investigation), rather it supervises (formal investigation) whether lower courts have

investigated the evidence accurately and based on law or not. Article 557 of (previous) Civil Procedure Law confirms this matter.

Court Restriction in Investigating Evidence expressed by the Litigants

The legislator has mentioned this restriction in the second part of Article 358 of Civil Procedure Law, "... rather the court investigates evidence submitted or expressed by the litigants." The word "rather" indicates that the principle positive concept is more underscored by the legislator than the negative concept. However the remarkable point is that "prohibition of evidence obtainment principle" is more discussed in our judicial procedure and legal literature!

Part III: The Result of Judge Activism Thought in Evidence Obtainment

In the last issues it was revealed that the judge prohibited from obtaining the evidence was gradually permitted to "carry out "necessary investigations for discovering a matter during the trial (second part of Article 358 of (previous) Civil Procedure Law). This general prescription was confined to the investigations predicted in the Civil Procedure Law whether in terms of title or the related regulations such as site inspection and investigation, etc. but personal investigation was excluded from these investigations.

First Issue: Interrogation Conditions

The conditions of litigants' interrogation validity may be classified into three groups:

a. The conditions of the person who can interrogate or request the interrogation.
b. The conditions of the person who is summoned for interrogation.
c. The conditions of the subject of interrogation.

Chapter One: The Conditions of the Person who can Interrogate or Request the Interrogation

It must be noted that this person may be the court or one of the litigants, and each of them has its own specific conditions.

First Clause: The Court as the Interrogation Seeker

The French Civil Procedure Law explicitly provides that the judge may summon the litigants (Article 184). Decrees issued by the French Supreme Court indicate that substantive judges evaluate the order of summoning the litigants, and in the other words, this has been totally at the courts' discretion (Les Juge, 2003). Since investigation stage has been predicted in the French Civil Procedure System, the judge enjoys such authority as well. In the Arabic countries laws, the court has this authority to summon the litigants without needing the request of the litigants. So, interrogation is among the litigants rights in judicial practice of these countries.

In the Iranian law, the court is bound to undertake any investigation or measure required for discovering the truth. Article 199 indicates such an obligation and that the court must do it without needing the request of the litigants.

Second Clause: The Litigants as the Interrogation Seeker

It seems that the French Law is silent about the right of one of the litigants to request the interrogation. Yet the Arabic countries laws have recognized this right for the litigants. Thus no one except for the litigants enjoys such a right. However, the court may accept or reject the request of one of the litigants for interrogation. Some Arabic authors believe that interrogation does not always aim at achieving judicial confession; rather it is sometimes used as a defensive means by one of the litigants and as a tool for detecting the subject of dispute by the court.

Chapter Two: The Conditions of the Person who is summoned for Interrogation

The interrogated person is one of the litigants (i.e. plaintiff and defendant) that is summoned for interrogation by the court. Also a third party brought into an action is regarded as among the litigants. The interrogated person may be natural or legal. So the conditions of these persons are studied separately.

First Clause: The Conditions of Natural Person as the Interrogated Person

The natural persons that are summoned by the court to answer the questions of the court must have two conditions: capacity and possession permit.

Capacity

Only the litigants are the subject of interrogation. So the person that is summoned to the court for interrogation must have capacity. In the French Law that has been inspiring for the Lebanese Law, the judge may summon interdicted persons under the rules pertaining to the persons' capacity; also their legal representatives or the persons who support them may be summoned to the court.

Possession Permit

Maturity, wisdom and authority constitute the elements of capacity. Lack of one of these elements makes the person incapacitated. Besides the above mentioned elements, possession permit has been added to the conditions. Some lawyers (Katuzian, 2003, v. 1, pp. 208 and 209) believe that adding this condition imply two important results: first, although a bankrupt person is not considered interdicted, he is prohibited from possession of his assets due to protection of creditors' rights. Consequently as per Article 1264 of Civil Law, "confession of an insolvent or bankrupt person regarding his assets before the judge is not effective". Second, a principle has been provided for distinguishing effective confession: the one who owns something does own its confession.

Second Clause: The Conditions of Legal Person as the Interrogated Person

Civil law has provided no rule for legal persons' confession. However the scholars' doctrine has compensated this deficiency to some extent. Some lawyers (Dolatshahi, 1963) have not regarded the confession of state organizations representatives effective if not complied with administrative formalities unless such a right has been considered in the organization rules. As regards confession of commercial companies' representatives, it is believed that when a manager has some rights and authorities for management he can confess in the framework of the same authorities and this confession against the company will be effective.

Chapter Three: The Conditions of the Subject of Interrogation

The affairs that can be the subject of interrogation must have two essential conditions.

First Clause: Essential Conditions of the Subject of Interrogation

The affairs that can be the subject of interrogation must have two essential conditions.

Attributable to the interrogated person

One the main conditions of the interrogation subjects is that it must be attributable to a person who is summoned (Alabudi, 1999) and some believe that interrogation is possible in any affairs attributable to the interrogated person even it is a criminal affair (the same) and as regards the legal person, these affairs must be attributable to the legal person rather than the person who is summoned as the representative or an informed person (the same).

Effectiveness of the subject of interrogation on the court decision

This condition is among the general rules of evidence investigation. Article 200 of Civil Procedure Law provides explicitly that, "evidence that is effective on the final decision is investigated in the court session...".

Second Issue: Interrogation Procedure

Some procedures are focused on the time and location of interrogation writ issuance and some other pertains to its method in the court session. So we study interrogation procedure in two parts: general interrogation procedure and particular interrogation procedure.

Chapter One: General Interrogation Procedure

First Clause: Necessity of Writ Issuance for Interrogation

Initial decision of the court must be in the form of "writ" to provide the stage of issuing "decree". So the court is required to issue writ of personal presence for interrogation. This is inferred from Article 96 of Civil Procedure Law indicating personal presence of the litigants for interrogation.

Second Clause: Location of Interrogation

According to general principles of civil proceedings, the evidence is investigated in the court session unless law has provided otherwise (Article 200 of Civil Procedure Law). For example, the court may hear the witness at his home or workplace (Article 244 of Civil Procedure Law). And if hearing the witness is out of the court jurisdiction, the court may assign it to the competent court of witness residence (Articles 245 and 290 of Civil Procedure Law).

With regard to this general principle, interrogation must be undertaken at the court session unless there is a legitimate excuse.

THIRD ISSUE: INTERROGATION RESULTS

The person that is summoned by the court for interrogation may react to arraignment by four manners.

Chapter One: Lack of Presence of the person summoned for interrogation in the court session

First Clause: Lack of Presence of the summoned person with a legitimate excuse

If one of the litigants refrains from taking part in the court session with an excuse and the court considers it acceptable like travel or disease, the judge may determine another session for interrogation or send one of the magistrates to his residence (Alshurabi, 2003, p. 871). The Lebanese Law has predicted such a matter explicitly and provided that one of the judges must be sent there.

Second Clause: Lack of Presence of the Summoned Person without a Legitimate Excuse

There are different executive guarantees for lack of presence of the summoned person in the court without a legitimate excuse. The French law has permitted the judge to infer any order from that and regards it as the commencement of written evidence (Andrew Choo, 1347, p. 3). The Lebanese Law, in which there is no difference between refusal to attend and responding to the questions in terms of guarantee, has permitted the court to regard refrain of the summoned person from presence as "permission for the events accuracy". Some interpreters of Lebanese Civil Procedure Law have deemed this interpretation as an implicit confession of the subject accuracy and simultaneously they have encountered this problem that implicit confession is not inferred from a mere silence (Elyas Abueid, 2003, p. 500).

CONCLUSIONS

The science of law seeks to eliminate the human needs by formulating rules and principles, and one of these intrinsic needs is truth discovery. In the other words, the main task of judge is discovering the truth through judicial measures. With regard to the importance and position of judge in distinguishing right from wrong, in the civil procedure system it is exaggeration to regard dispute settlement as the mere goal of trial. In general, two kinds of trial are discussed in the Iranian Civil Procedure Law: accusatory system and inquisitorial system. In accusatory system, the law assigns administration of the action to the litigants or their lawyers; whereas in inquisitorial system, it is assigned to the court initiation.

The principle governing this thought is "prohibition of evidence obtainment principle" which stems from individualists thoughts. So the court is prevented from any measure or initiation unless the judge measure to investigate the evidence is requested by the litigants or prescribed by the law.

At the present juncture, verdicts issued by the courts after enactment of this law and Iran judicial precedents have welcomed this measure. For example, the verdicts in which the measure required for truth discovery has not been undertaken by the judge due to his negligence were quashed by the Supreme Court, though considering some restrictions for the judge in discovering the truth is essential for guaranteeing health and security of the judge and the litigants. In the other words, in this process the judge is bound to observe strategic principles and conditions of proof such as correspondence principle, defense right, and neutrality.

Therefore evidence obtainment is not an obscene act; rather it may lead the judge towards truth discovery. In fact, evidence obtainment provides the stage of truth discovery and interrogation is the most effective tool in this regard. Moreover, the desired goal of each trial is truth achievement, though dispute settlement is only taken into account. It can be hardly claimed that the forum which does not have an effective authority and role in the trial will guarantee justice.

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