

Intervention of third party in proceedings of Iran and France law

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ABSTRACT

Objective: Third party objection is a strategy which prevents the violation of rights of third parties. The only place where there are laws about the third parties' objection is Articles 417 to 425 of the law of rules of procedure in civil matters. **Methodology:** In Article 417 of the law, the terms of third-party objection are listed and subsequent legislator in Article 418 of the Civil Procedure Law has predicted the possibility of third-party objection against the arbiter decision that in some ways has specific criteria. **Results:** In accordance with this provision, "about the previous article, third party has the right to object to any rendered judgment from the General, revolution and appeal court and to the arbiter award, those who self or their representative are not involved in the determination of arbiter can object as a third party". And law enforcement in Articles 146 and 147 has discussed third party objection. **Conclusion:** In French law, pursuant to Article 584 of the new Code of Civil Procedure of France in the case that the parties of vote objected a lot and the vote is not degradable, third party objection can be accepted if all parties of dispute to be in side of objection dispute.

1. Introduction

One of the types of complaints raised of rendered judgments is third party objection. Because it may be entered 'defects' from the rendered judgment to the rights of parties who were not in dispute, the legislator has predicted the right to third party objection for these parties. Considering that the court has acted to issue judgment after investigating documents and pleadings of the parties, in the dispute of third-party objection, the court shall again investigate to the issue of third-party opposition claims (Jafarian and Rezaeian, 1998).

Admittedly, the origin of the concept of third-party objection has been France and its related issues in this country are started from the seventeenth century onwards with the introduction of the theory of Proudhon, the famous French lawyer. According to the lawyer, the provisions at enforcement stage against everyone who is exposed to it is valid, unless he can prove its opposite and to prove the opposite party is nothing but raising third party objection dispute. Of course, the basis of accepting the legal establishment in the Iranian justice system should be considered the principle of "Alghayeb Ali Hojateh". Third party objection is predicted as the "third party objection after sentencing" in Articles 523-514 of Law of Civil Procedure enacted 1952, that was mainly inspired from the Civil Procedure Code of France. In Civil Procedure Act enacted 1939 also Article 590-582, as the "third party objection", has predicted the complaint mentioned. Articles 417-425 of new law are dedicated to "third party objection". Third party objection in addition to the Civil Procedure Code, Chapter V (Articles 146 and 147) civil law enforcement, is dedicated to it. Of course, third party objection in civil enforcement is the execution operations and is distinct from the objection to vote (Reisman, 1980).

Despite investigating the dispute of third-party objection by lawyers, there are ambiguous and debatable issues that are not carefully studied and investigated. This article reviews the third-party intervention as applicable to this type of complaint and comparative look at the Iranian and French law (Hanessian, 1988).

1.1 Definition of third-party objection

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Third party objection. [A T Z Sh S L] (adduct, or compound A) is a legal term and it is the objection that someone has other than the two sides of dispute to judgment to prevent disturbing that the ruling mentioned entered his right, in addition gives petition to court issuing ruling or order of person protested. Third party objection is considered one of the wonderful ways of complaint of votes, which is open to third parties. In cases that ruling or order has been issued in a dispute and due to it, some defects are for rights of third party and more simply imposes losses on third party (Matin Daftary, 2002 a) the third party has the right to appeal against the ruling or order (Article 417).

1.2 History of third person objection

History of third person objection turns back to Roman law. In Old French law to the seventeenth century, people did not know it and if persons are affected of provisions of ruling, whether involved in the proceedings, or not, they could appeal it. This method continued until in king order 1667 that later was one of the sources of Civil Procedure of France. After king order 1667, new ways were predicted that was similar to the third-party objection and retrial and gradually that the third-party objection is repeated, its cases will be clear and obvious (Charney, 1998). Finally, lawyers concluded that the rules of third-party objection should be different with rules of investigation and retrial. So, they determined its specific conditions and rules and complained in other ways and recognized it as an independent and fully way and the courts gradually made clearer its cases with their changes that it is accepted today (Bazgir, 2001). In Iran in temporary law of Legal Procedure Code approved in 1949, a discussion was predicted as "third party objection after sentencing" that it was inspired of the French law because Moshir-ol Doleh with consultation of Adolph Parney had written it (Bahrami, 2002) and later in Procedure Code was completed in 1939. The Supreme Court also highly sought in clarification of its provisions that in 2000, it was investigated completely in Articles 417 to 425. But today's French legislation regarding the third-party objection between two theories is opposed that is found when adjusting French Civil Procedure. One is pro license of objection to provisions for any third party and other is tend to the blockade and restrictions on third-party objection to fraud cases, by the record in French Code of Civil Procedure of provisions relating to third party objection is set and because there was not consensus in its basis (Guillaume, 2011). In setting article other than reference issue of objection petition, in other matters has briefly been held. In some other countries law of Europe, third party objection not has title.

2. Materials and methods

2.1 The possibility of third-party intervention in the criminal court

According to Article 418 of the Procedures of general and revolution courts in civil matters, third party has right to object to any decree that is issued in General and Revolution Courts and entered defects to his rights, provided that in the proceedings leading up to the vote, self or his agent do not interfere. Taking into consideration the totality of this matter and on the basis of general jurisdiction of general and revolution courts (Article 1 of the Law on general and revolution courts), if the General Criminal Court investigation or revolution court dealt with the rights of third party from the private and financial aspect, there is the right to this lawsuit for third party (Gharavi, 1999).

In Criminal procedure in France and judicial precedent of the country, for third-party, intervention is predicted in criminal procedures is cases that third person has the civil liability of the accused, such as insurance companies, or in the case that student or employer of a workshop under the supervision of the employee must perform a task and caused loss or damage by accidents in the other workplace (Gaston et al., 1998).

2.2 The respite of third-party objection in Iranian and French law

In Iranian law, respite is not determined for third party objection. So, the votes of trials without time limits are objectionable and does not differ that person was aware of vote or not. In French law, respite for third party objection is 30 years under Article 596 of the Civil Procedure of France but if the vote objectionable is communicated to third party, the respite mentioned reduces two months of the notification deadline and third-party objection is without respite. (Shams, 2012). Third party opposition can object in the day of execution of sentence or after it if the law that is the basis of objection not to be overturned. Article 422 of Civil Procedure provides: "Third party objection can be raised before the implementation of sentence and after it, it can be objected if it is proven that the law that is the basis of objection not to be overturned due to the legal aspects.

2.3 Effects of third-party objection

Derived from Article 424 of the Procedures of General and Revolution Court in civil matters and in compliance with the general current principle about the excellent ways of the complaint of commandments, third part objection does not delay the execution of a final judgment, but in some cases may be obtained losses from the execution of sentence of person protested that is impossible to make up it in the future If proven from protested, the court investigating to objection after getting the appropriate supply of the above mentioned will issue the delay of the execution of warrant for a specified period. Obviously, the diagnosis of attention or non- attention of irreparable loss and delay time of implementation is with court related. Article 478 of Civil Procedure Code of France stipulates in this regard, "definitive verdict of sentence to assignment and cessation of possession of legacy even with the third-party objection will be executed but in other cases, the protested can be suspended based on execution of verdict." So that it is considered subject of obtaining the guarantee not stipulated and deriving from the following material is that If the Court determines that irreparable harm will be obtained from the implementation of judgment, its execution will be suspended till definite disposition and removing losses.

After hearing If the court determines the objection relevant, it will issue the vote for non-relevance of objection and its rejection and the decision has been made given that after investigating the essence of the matter, it is considered verdict not order. Supreme Court in vote dated 1959 also has stipulated this meaning, by rejecting objection of verdict, protested will be remained and judgment creditor is entitled to claim damages of hearing. Under Article 479 of the Civil Procedure Code of France, in case of rejection of the objection claim (in addition to compensation), protester will be sentenced to pay a fine equivalent to 25 to 100 francs. Whether in main objection or incidental objection if the court considers the objection relevant, it revokes judgment of

protested in a part that is detrimental to the interests of the protester. Obviously, the verdict of protested in a part that not contacts with rights of protester and will be remained in his force unless the judgment is indivisible and non-analysis, that in that case, all verdict is annulled. Verdict No. 1395-1319/5/2 of the Court refers to this meaning.

Judicial precedent of France also believes that if the objection is relevant against the part that is detrimental to the rights of protestor, it is canceled and the abolished.

Rulings by the third-party objection can be complaint thus if issued from first court, it can be appealed. Also, whenever petition of objection was rejected, objectionable of Court decisions on rejection of objection is subject to the general rules.

3. Discussion and results

3.1 Conditions of third-party objection in Iranian and French law

Using Article 417 procedure law of general and revolution courts in civil matters based on that 'a verdict to be issued that the rights of third party to be defected and that person or his representative in the proceedings leading up to the vote as the parties not involved ... "it can be said to accept third part objection, the following conditions are essential.

1. Protester must be suffered damage or such a threat to be existed:

One of the conditions of third party objection is that the rule or order protested in some way is the disruptive of the rights of third protester or there is the possibility of loss for him, this is due to general principles contained in Article 2 of the Civil Procedure Code whereby the court only at the request of the person or persons of "beneficiary" investigates the claim. "And if the benefit is not existed, the claim is not related." For example, guarantee without the intervention of debtor against creditor is sentenced and debtor that is plaintiff to pay to creditor because of losses for him objects on the sentence of guarantee or court to demand the purchase of a property against occupying the property as the claim is subject to time, the order of rejecting claim is issued and the seller of the property by validating that is the guarantee and may be affected, he objects to such an order. To fulfill the condition of objection using Article 417 to express "defects ... "and considering the judgments from Supreme Court branches, non-conditionality and loss is not required but possible and future damage can be license of submitting objection petition (Matin Daftary, 2002 b). According to France's courts, the possibility of entering third person not prevents that the finality of the verdict after verdict as a third-party object to it, what people should be free to recognize their interest to act (i.e. before the issuance of the verdict entered into the claim or after issuing object to it). Iranian judicial procedures follow this idea in this case. Using Article 417 of the Civil Procedure Code, authentication of affected by a rule is the substantive issues and in Iran is subject to the court process. According to judicial precedent, identifying beneficiaries of protester and obtaining disruption in his rights is the features of substantial courts and from the Supreme Court is not controllable.

2. Second condition of non-interference of third protester or his representative in the proceedings leading to the judgment:

i.e. the third party as parties of claim or third part summoned to dispute, not has an intervention in the trial, which resulted in a final judgment. A point that must be considered is that in Article 582 of Procedure Act instead of "not involved in the proceedings as parties of claim," has been this sentence: "... not summoned in trial ..." and it is clear that correcting this sentence in the Code of Civil Procedure in 1939 and civil proceedings of general and revolution courts in civil matters reflects the concept of third party more clearly:

In the Civil Procedure Code of France as the law of Procedure Code in Article 474, the sentence of not invited is mentioned and the translation of article is as "one can object to a verdict that defects his rights if neither him nor his representatives not invited in the proceedings to the claim. "

There is a difference between two phrases in terms of meaning and concept. This means that by the interpretation of the law of Iran, one who his name is mentioned at any stage of the proceedings as plaintiff and defendant or their representative whether he is in the original dispute or conflict or entry or attract third party whether invited at the hearing or not. He should raise lawsuit ordinary and vice versa according to procedure law of France that is the same with former Iranian Procedure whoever is invited at the hearing, his third-party objection will not be accepted on the verdict of that stage of the proceedings.

3.2 Judicial precedent of France and Iran

The idea of French courts is to develop examples of third-party objection. Courts consider the right of proceedings of objection generally for third parties whether as a result of the real violation of the verdict to their rights forced to resort to it or in a way calls for their benefit to initiate proceedings to a verdict and discredit it. In the view of courts, third party objection is against the entrance of third party. As long as a dispute is raised third parties can enter the claim in order to that claim not leads to a verdict that is contrary to their interests. In fact, the arrival of third party means remedy before the event and a drug that is used to prevent disease. So, when the disease occurred, a drug that after sentencing applied to third party interests will be third party objection. Resorting third person to the objection is to prevent a disturbing that verdict enters to his rights. So, fundamentally there is no reason that third part objection scope against third party is more limited. Contrary to the opinion of France courts, it is appropriate the use of it whether to prevent disease or to cure it to be the same (Matin Daftary, 2002 a). In Iran, limitation of the third-party objection is not followed and Article 417 General and Revolution Court procedures in civil matters allowed to person who are not parties that if a verdict harm their rights to be objected on it.

In Iranian law, third party objection is placed within the claim of third party's intervention: it means that when a person in a dispute considers his rights to be violated can choose one of the following two solutions:

1. While proceedings as a third party to be entered and gives the reasons of his truth or a party that his ruling is in his favor. In this case, a verdict that is issued after considering third party reasons and main parties against all of them will be benefited from the rule sealed.

2. Or waiting trial's outcome, and if the judgment is against himself as a third-party object to it and demands the abolition of that part of the judgment that harm his interests. Detecting which of these two ways can better supply benefits of third party is with him and ruler not has any restrictions in this respect

(except benefit). The idea of voluntary of third-party objection in the judicial precedent of Iran can be inferred from decree No. 116 dated 22 April 1949 branch III of the Supreme Court as well (Matin Daftary, 2002 b).

4. Conclusion

Third-party objection is considered one of the wonderful ways of the complaint from votes, from this view that this complaint has no effect suspended on the enforcement. The only place that there is text about third party objection is articles 417 to 425 of the law of procedure in civil matters. In Article 417 of the Act, the terms of third party objection is listed and subsequent in Article 418 of the same law also stated that "about the previous article, third party has the right to object to any verdict of the general, revolution and the appeal courts and can object as a third party to arbiter award or those who self or their representatives not participated in determining arbitrator".

According to Article 417 "If a vote to be issued about a dispute that defects to rights of third person and that person or his representative in the proceedings leading up to the vote as the parties not involved, it might be objected to it. "Moreover, Article 418 of the same law has considered contestable any verdict from general, revolution and the appeal courts; there are no restrictions in terms of time to be raised.

According to Article 417 of the Civil Procedure Code in the General and Revolution Courts in civil matters if a vote to be issued about a dispute that defects the rights of third party and the person or his representative at the hearing leading up to the vote as parties not involved can object to that vote. In temporary law of principles of legal proceedings in 1950, third part objection is predicted and it is clear that the invention of French law has indirectly reached to us, but our law in this section is not briefly French law. Set petition of third-party objection and reference and hearing it in our former rules is specified enough and in the Code of Civil Procedure 1939 and general and revolution courts in civil matters Act 1999 has been completed. But compared to the basic condition of third objection Article 417 of the law: "a verdict to be issued that defected to the rights of third party" is similar to French law and it is interpreted variously by the French lawyers. In the view of our courts, right of objection is expected for a third party that the ruling is contacted to his rights and if not any contact and not affected, his objection is not relevant.

In Criminal procedure in France and judicial precedent of the country, for third-party, intervention is predicted in criminal procedures is cases that third person has the civil liability of the accused, such as insurance companies, or in the case that student or employer of a workshop under the supervision of the employee must perform a task and caused loss or damage by accidents in the other workplace.

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