

SOME CONSIDERATIONS REGARDING APPEAL EFFECTS IN JORDANIAN LEGISLATION

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Abstract

In the civil tradition, the right of appeal has a primary importance, as a fundamental safeguard of justice. The function of the Court of Appeal is to provide an appellate hearing of right, from any judicial decision of courts of first instance. On this occasion the entire record is brought before the superior Court for consideration and review, both the facts and the law. In Jordan, Courts of Appeal hear all cases of appeal from judgements of the Court of First Instance and all cases of appeal from the Magistrate's Court, which are not heard by Courts of First Instance. A three judge panel considers all matters raised in the Court of Appeal.

Keywords: *Court of Appeal, appellate hearing, judgement, courts of first instance, three judge panel, double jurisdiction.*

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1. Introductory considerations

The approach to the aspects concerning the institution of the appeal in the Jordanian legislation, had as considerations the surprising similarities with the way in which the appeal is regulated in the Romanian legislation. Although in the judicial system in Jordan there is a well-defined structure of religious courts, common law (secular) courts are equally represented, which operate according to rules and based on regulations similar to those we encounter in Europe, suffering mainly from the influences of French law.

Justice in Jordan is based on principles that support and determine the premises/legal framework, to allow the judge to perform the act of justice. The Constitution, for its part, supports the citizen's right to request the help of justice, derived from the much more general right to petition, considering that this way satisfies the need of those who seek to establish the legal truth or, as the case may be, restore it.²

This is where the strength of the judicial system resides: every citizen feels that he will regain his rights if he resorts to justice, as a natural consequence of trust in the legislative power and later in the judicial power, called to apply legal norms and rebalance the balance of justice.

Thus, the legislator established the legal framework that allows access to justice, the procedures and deadlines for the exercise of rights. In the same sense, rules were developed that regulate the formal requirements of a petition (demands), the right to defense, the means of probation, the equal treatment applied to the litigating parties, the right of the judge to insist by all means to find out the truth, so that, in finally, to pronounce a thorough and legal solution, by which to restore the right, forcing the other party to comply.

The administration of justice is at the same time an act charged with solemnity, being the expression of a duty of honor and conscience, which the judge assumes at the time of his inauguration. The role of justice in a modern society is to restore social order whenever it is violated or ignored, instilling a sense of security in citizens and being a guarantor of the rule of law.

Compliance with the law is done, in principle, without judicial intervention, because citizens obey the legal regulations, either out of conviction or out of natural fear of the coercive force of the state, which has specific means and tools to penalize/sanction it.³

However, human nature has imposed, over time, the intersection of conflicting interests and rights between individuals or groups of individuals, thus giving rise to conflicts that, in turn, have generated litigation. Rights can be exercised and capitalized to the extent that someone watches over

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² Mohammad Hamed Fahmi, *Civil and Commercial Procedures*, 1940 edition, p. 25.

³ Mohammad Al-Kilani, *Explaining the Procedure of Civil Lawsuits*. second edition, year 2006.

how this is done, and this is where the role of justice comes into play. Its activity can only be effective if its independence is ensured, a real separation of powers being necessary in the state. In the absence of this independence, the act of justice remains a formal approach, intended to offer only the appearance of a guarantee of stability⁴.

Judicial intervention will take place to restore due respect for the law, penalizing any person who acts against it.

From the perspective of access to justice and the degrees of jurisdiction, we identify in Jordanian legislation, as in that of Romania, the presence of the principle of the double degree of jurisdiction.

The principle of "judgment on two levels" gives the chance, for the party against whom a decision was made, to "present" the dispute before a higher court, to reanalyze the case. Thus, Jordanian courts are grouped into:

- First degree courts, those that judge the litigation for the first time (judgment on the merits).
- Second degree courts, the courts that are charged with verifying and "correcting" the solutions of the first courts. These are considered appellate courts.

The principle of the double degree of jurisdiction is one of the general principles on which contemporary judicial activity is based for the smooth running of justice.⁵

It "urges" the courts of the first degree to pronounce their sentences with responsibility in order to prevent their annulment, abolition or modification by the courts of the second degree.

In addition to this fact, it satisfies the need for justice of the "convicted" (fallen in claims), by giving him the chance to present his litigation before a higher court, whose judges are more numerous and more experienced vast.

Aspects related to the exercise of the appeal, categories of decisions that can be appealed, formal requirements, etc. were analyzed in a previous paper, so that the present approach is limited to the effects of the call.

2. The effects of the appeal on the contested decisions

The appeal request invests the court with its judgment, which essentially represents a new judgment on the merits (devolutionary effect of the appeal). However, although the appeal court's prerogatives are generous, allowing it to verify not only legality aspects but also those of merit, its activity must be limited to the limits of the appellant's investment, according to the request made by him. In this way, the entire case file can be "re-evaluated" (evidential aspects, invoked exceptions and defenses, formulated requests). If justified, some of these can be reiterated and even supplemented, provided they do not exceed the limits established by law. The goal is, in the end, for the hierarchically superior court to exercise real control over the activity of the first court and to be able to pronounce a thorough and legal decision, justified by the evidence administered and retained in the considerations. There is no doubt that these circumstances have important consequences, aspects that we will address next.

2.1. The limits of the devolution effect of the call

As I mentioned before, the appeal, due to its devolutive nature, transfers the right to judge from a lower court to a higher court, but within the limits set by the one promoting the appeal, through the request that formulate. These consequences can be summarized⁶:

"Preservation" of data and evidence presented before the trial court. The appellate court has the right to base its decision on the same grounds, evidence and defenses that were invoked and retained before the first court. This does not stop the court of judicial review from basing its decision

⁴ Dr. Mufleh Al-Qadat, *Civil Case Procedure and Judicial Organization*, 2004, edition I, Dar Al-Thaqafa Publication, p. 36.

⁵ Mohammed Abdul Khaleq Omar, cited by Mufleh Al-Qadat, *op. cit.*, p. 92

⁶ Shoshary, Salahiddin Mohammed (2010), *Explanations of the Code of Civil Procedure*, first edition, Amman: Culture Publishing House for publication and distribution, pp. 400-404.

on other arguments, contrary to those on which the appealed sentence was based, provided that they, in turn, have a correspondent in the evidence and defenses invoked by the parties concerned. In this sense, art. (187) of the Code of Civil Procedure, provides⁷: "The Court of Appeal has the right, when pronouncing the decision, to rely on reasons contrary to the reasons on which the court of first instance relied in pronouncing the sentence, if those reasons are supported by the record of the administered evidence", however, re-administration of the evidence that was used is not allowed before the trial court.

Inadmissibility of the administration of new evidence before the court of appeal. This provision is based on the fact that the parties had the opportunity to present the evidence and means of defense before the first court; by way of exception, the legislator allowed the parties to supplement their evidence in the following situations:

- the trial court refused to receive documents, although according to the law, it should have received them;

- the appeal court considers that it is necessary to present a document or hear a witness, in order to be able to judge the case or for any other reason; (the latter may admit the presentation of that document for its study or the bringing of the witness to hear it);

- the appealed sentence was pronounced in the absence of the party, depriving him of the possibility to formulate his defenses. In this sense, the party must prove that his absence before the court was justified. Consequently, the appellate court will accept the newly requested evidence, in order to guarantee a fair trial, in which all parties involved have benefited from the right to defense⁸.

These three situations represent as many exceptions to the rule according to which no new evidence can be invoked in the appeal. Accordingly, if the appellate court finds itself in any of the aforementioned circumstances it will have to:

- a) to record/mention in the conclusion (meeting notes), the reason that led to the admission.

- b) to directly evaluate the accepted evidence.

Inadmissibility of presenting new reasons before the appellate court. The appellant cannot present new reasons before the appellate court. It is, on the one hand, the grounds invoked before the first court and on the other hand, the grounds invoked by the appeal request. There are, by way of exception, situations where the court is not subject to limitations. In this case, the court has the right to judge the appeal without limiting itself to those reasons, according to the provisions of art. (184) of the Jordanian Code of Civil Procedure⁹.

Inadmissibility of presenting new requests before the court of appeal. The appellant does not have the right to submit new requests, which were not submitted before the trial court. Although the Jordanian legislator did not deal with the subject (the new requests before the appeal court), with a clear text, the jurisprudence and the doctrine highlighted the inadmissibility of submitting the new requests before the appeal court, for the following reasons¹⁰:

Admitting new applications addressed directly to the appellate court undermines the principle of dual jurisdiction, which is the fundamental principle on which the Jordanian judicial system is based. This principle responds to the direction and guidelines proposed by the Jordanian legislator, who considered that the rules on jurisdiction are of public order. It is necessary to make a distinction, however: the legislator does not refer, in any case, to the situations in which the Court of Appeal is granted the authority to judge in a conflict brought before it for the first time, but to the judicial review of a situation legal, already subject to a jurisdiction of first instance.

The admission of the new requests on appeal is incompatible with the role assigned to the higher court in the degree, that of censuring a decision belonging to a lower court in an already

⁷ Art. (187) of the Jordanian Code of Civil Procedure provides: "The Court of Appeal has the right, when pronouncing the sentence, to rely on reasons contrary to the reasons on which the court of first instance relied in pronouncing the sentence, if those reasons are supported by the record of evidence".

⁸ Court of Cassation, Jordanian law jurisprudence, decision (1139/69), p. 2354, year 1997.

⁹ Art. (187) of the Jordanian Code of Civil Procedure provides: "The appellant does not have the right to submit, during the deliberations, reasons that were not mentioned in his written request, except with the consent of the court, based on sufficient reasons, but the court is not restricted, at the hearing of the appeal, by the reasons shown in the request for appeal..."

¹⁰ Abu-Alwafa, Ahmed (1990), *Code of Civil and Commercial Procedure*, 10th edition, Alexandria: Al-Maaref Publishing, p. 823.

determined procedural framework.

The Court of Appeal will re-judge the dispute, within the limits set by the appellant through his request. If the court of first instance decided to oblige the defendant to pay compensation to the plaintiff, as a result of the finding of the damage suffered by him, and the defendant files an appeal regarding the amount of these compensations, the appellate court considers itself vested only within these limits. The other aspects of the decision will not be changed. Although there is no explicit legal text in this regard in the Jordanian Law, this is the correct solution, resulting from the corroboration of other legal provisions: "The court will not judge more than what was asked of it by the parties" according to the provisions of art. (198/5)¹¹ and (213/5)¹² from the Jordanian Code of Civil Procedure. Just as the trial court is not allowed to rule on what was not asked for or grant more than what was asked for, neither can the appellate court be accorded such a right. The court exercising judicial review has a double limitation: on the one hand, the limits imposed by the appellant through his request; on the other hand, the limits of the procedural framework fixed from the beginning of the process, through the summons and the other introductory court documents. Failure to comply with these principles allows the decision to be appealed to the Court of Cassation according to art. (198/5) from the same law¹³.

The appellate court's obligation to send the case for retrial, if the court of first instance ruled without having entered into the investigation of the merits. I noticed in the above, the fact that the appeal can only be made with regard to what was initially judged by the first instance. If the court invested with a request has issued a decision without entering into the investigation of the merits of the case, the appeal court cannot rule on it for the first time, on the occasion of the resolution of the appeal. According to Jordanian law, it is necessary that one or both of the conflicting parties be dissatisfied, starting from the premise that the first court investigated the merits of the case, in order to invest the court of appeal. It cannot substitute itself for the first instance, judging. This rule is based on two considerations:

The parties cannot be deprived of a degree of jurisdiction; The appeal - being an appeal - basically involves a criticism of a decision by which a court has already ruled on the merits.

2.2. The solutions pronounced by the court of appeal

The court of appeal verifies *ex officio* if the request meets the conditions provided by the law and if it was submitted within the legal deadline, considering that otherwise, a rule of public order is violated (the deadline being imperative and absolute). Filing the appeal after the expiration of the legal term, leads to the rejection of the request without analyzing the object of the appeal, according to art. (172) of the same law. Another requirement is the prior obligation to pay the related court fees¹⁴.

After finding that the appeal formally meets the requirements imposed by the law, the court proceeds to deliberate on the subject of the case, and pronounces the decision according to the evidence presented in the case and the convictions it forms, the solutions may be the following:

Rejecting the appeal and upholding the contested decision: In this case, the appellate court upholds the decision handed down by the trial court considering that it is legal and well-founded. This

¹¹ Art. (198/5) of the Jordanian Code of Civil Procedure provides: "Judgment in cassation is not allowed in the following cases: ... 5. if a case was judged with an object that was not requested by the parties or.... more than they asked for".

¹² Art. (213/5) of the Jordanian Code of Civil Procedure provides: "The parties do not have the right to request a retrial of the sentences that have acquired irrevocable power except in one of the following cases: ...5. if a case was judged with an object that was not requested by the parties or more than they requested".

¹³ Court of Cassation jurisprudence, Jordanian law decision (2024/98), page 2461-year 2000.

¹⁴ Art. (188) of the Jordanian Code of Civil Procedure, states: "If the second-degree court observes that the appeal was filed within the legal term and meets the required conditions: 1) Admits that the appealed sentence is well-founded and legal, by mentioning the grounds on which it was based/ rejecting the grounds of appeal clearly and explicitly. 2) If he notices that the request has deficiencies in terms of form or object and the decisions rendered are not legal ... 3) If those formalities and errors change the result of the sentence, or if the sentence is illegal, annul the sentence in whole or in part by a single ruling. 4) The appellate court is obliged to deal in detail with the grounds of appeal, when pronouncing the sentence. 5) Rejection of the appeal request for lack of jurisdiction or prescription, or for any other formal reason that involves sending the case to the court of first instance for retrial.

solution is pronounced after the reasons cited by the parties are analyzed in advance and are considered unfounded. There are two such situations:

- it is noted that the sentence pronounced by the first instance court is thorough and legal, without any formal or substantive deficiencies, thus there are sufficient grounds to "support" and motivate the retention of the decision. It is also obliged to deal with the grounds of appeal very clearly and explicitly, according to the provisions of art. (188) of the Jordanian Code of Civil Procedure¹⁵.

Admitting the call, annulment/repeal of the appealed sentence and pronouncement of a new judgment. There is the possibility that the court of first instance has committed serious errors, either in terms of formal, procedural requirements, or with regard to the merits of the case, which could lead to a change in the solution, the sentence being illegal and/or groundless. In this case, the appellate court can abolish the appealed sentence and rule on the merits of the case through a single decision, according to para. 3 of art. (188) of the Civil Procedure Code. It is worth mentioning that the text of art. (188/3) of the Code of Civil Procedure applies to appeals filed against sentences handed down by first-degree courts, and to appeals filed against judgments handed down in conciliation cases, the provisions of art. (28) of the Conciliation Courts Law, as amended. In all situations, the court of appeal is obliged to analyze and respond to each reason for appeal, clearly and explicitly motivating the solution pronounced.

Admitting the appeal, canceling the appealed decision and sending the case for retrial by the first instance court: If the appeal court (second instance court) notices that the first instance (first instance court) judged the case without resolving its merits (noting the lack of jurisdiction, the intervention of the statute of limitations or any other reason that made it impossible to judge on the merits) will admit the appeal and will have to decide on the retrial of the case by the court of first degree, according to art. (188) of the Civil Procedure Code. The text of the law refers to the aspects of competence or extinguishing prescription, by way of example, but uses the phrase: "for any other reason" that prevented the pronouncement of a solution on the merits.

In the same sense, the appellate court will proceed, if it finds that the reason for not resolving the case was the invocation of the alternative arbitration procedure.

The same benchmarks, found in art. (188) of the Code of Civil Procedure, are also found in art. (28 and 29) of the Conciliation Courts Act as amended. At the same time, we must mention a notable difference: in the appeal filed against the decisions handed down by the conciliation courts, after the retrial, the court of judicial review is obliged to judge the appeal, retaining the case. (art. (189) of the Code of Civil Procedure)¹⁶. On this occasion, the court must also rule on court costs in all procedural phases, as well as on the fees of the defenders. In this sense, art. (46/4) from the Lawyers' Bar Law no. 11/1972, stipulates that the maximum limit of these fees is ½ of the amounts charged for representation before the substantive court, the court of judicial control having the obligation to censor this aspect.

The explanations offered in the Jordanian doctrine, with direct reference to the provisions of the Code of Civil Procedure and to other normative acts that represent the legal framework, identify three important effects of the decisions handed down on appeal¹⁷.

Disinvestment of the court: After the ruling, the conflict is out of the court's authority, a situation in which the court can no longer go back on what it has ruled. In this way, it ceases to have jurisdiction over the settlement of the dispute. By way of exception, in cases expressly and limitedly provided by law (art. (213) of the Jordanian Code of Civil Procedure)¹⁸, a final decision can be

¹⁵ Court of Cassation jurisprudence; Jordanian law decision (2164/98), page 2238-year 1999.

¹⁶ Art. (189) of the Code of Civil Procedure provides: "The court will rule on the fees, expenses and fees of the defenders from the beginning of the case at the first instance court until the decision on the appeal is pronounced".

¹⁷ Bustamy, Basel (2003), *Light on Some Matters of the Code of Civil Procedure*, 1st edition, Amman, (D/N), pp. 146-147.

¹⁸ Art. (213) of the Code of Civil Procedure and its amendments, provides: "The opponents have the right to request a retrial of the case in some of the following cases: 1. If a party used fraud or deception during the trial of the case and thus the sentence was influenced. 2. If a party, after the sentencing, declares that the cited documents were falsified. 3. If the sentence was based on testimonies that proved to be false. 4. If the request for retrial takes place after the sentencing on some essential documents in the case, which were hidden by the party or instructed someone to hide them and were no longer submitted to the file. 5. If the sentence was pronounced with aspects not requested by the parties or with additional aspects at their request. 6. If there is inconsistency between the

appealed and implicitly changed, resorting to an extraordinary way of appeal, called review. Competence for resolution rests with the same court that issued the initial decision, so we can say that we are in the presence of an appeal for retraction and not for reformation (such as the appeal). There is another situation in which the competence rests with the same court: when it is aimed to correct material errors, calculation errors or any other omissions appearing in judgments or conclusions. These situations can be notified and addressed ex officio or at the request of the parties, without deliberation and without summoning the parties. The court clerk makes the correction on the original copy of the sentence and signs it together with the president of the panel, according to the provisions of art. (168) of the said law.

Authority of res judicata: The second effect of final judgments is found in the provisions of art. (41) of the Jordanian Code of Records. The final judgments rule definitively on the conflict that was submitted to the judgment, not being able to be later invalidated in a new litigation that would take place between the same parties, with the same qualities, having the same object and the same cause.

Other procedural effects: Jurisprudence distinguishes between two categories of judgments: declaratory judgments and judgments constituting rights. Those in the first category rule on a pre-existing right, recognizing and consolidating in this way, its legal force (such as the valorization of property rights). Decisions establishing rights have a legal (juridical) status, which they generate, modify or extinguish. It is about new legal situations, which did not exist before the judgment was pronounced (an example would be the judgment on compensations, on divorces or on the announcement of bankruptcy)¹⁹.

3. Conclusions

The appeal in Jordanian law is, according to the legal provisions, the only means of appeal through which the party who lost the case can request the modification or total or partial annulment of the decision given by the Courts of First Instance.

As I mentioned before, this appeal is the direct expression of the principle of double jurisdiction, a fundamental principle of the Jordanian judicial system. According to this principle, the "dispute" can be referred to a higher court, to be re-examined and consequently, either to "validate" the decision of the lower court, or to invalidate it, thus giving the party who considers himself injured in his rights, the chance to fully exploit his rights. The task rests with the Court of Appeal, which is vested, as a higher court in the degree, with the prerogative to examine the merits and legality of the appealed decision.

The traditional function of the appeal was limited to the need to "monitor" the activity of the Court of First Instance, but this no longer corresponded to the requirements of a modern society. The appeal received a new function, "finalizing" the conflict brought before the courts. In this sense, higher level judges are given the authority to retain the case for trial, whenever, in this way, its re-sending to the first instance is avoided. In this way, the solution becomes definitive and no longer opens the way for a new appeal, decongesting the role of the appeal courts. The new function of the appeal is added to the traditional one, representing a guarantee in the administration of justice.

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considerations and the device. 7. If a sentence was pronounced in the name/designation of a natural/legal person who was not legally represented. 8. If a sentence has been pronounced for the same parties, object and cause, and it is contradictory.

¹⁹ Bustamy, Basel (2003), *Light on Some Matters of the Code of Civil Procedure*, 1st edition, Amman, (D/N), pp. 146-147.

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