



The Measures of Abuse of Rights in Iranian and French Civil Proceedings

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Abstract

In civil procedure code, parties of lawsuit possess various rights, including right of lawsuit, and its aspects, such as having the right to sue and appeal against Decisions, raising objections, and presenting defenses. These rights, however, are susceptible to abuse. French code explicitly acknowledges the prohibition of abusing rights in civil procedure through articles within its Civil Procedure Code (e.g., 32-1, 559, 581, 628). Conversely, one infers this prohibition from a limited number of articles in Iranian law (e.g., note to Article 109 of the Civil Procedure Law). Nevertheless, additional factors in Iranian code, such as (a) Article 40 of the constitutional law, (b) the legal principle against abuse of rights, (c) the purpose of civil proceedings, (d) public order, and (e) the role of ethics in law, solidify the existence of this prohibition throughout the proceedings. This prohibition is not exclusive to the cases provided by the law (such as Note 109 of the Civil Procedure code) but governs as a legal principle throughout the proceedings.

Once the prohibition of abusing rights in civil proceedings is established, the next crucial step is identifying its measure or criterion. In the sense that in civil proceedings, to what extent and under what conditions is the benefit of the right "permitted" and subject to "use" of the right, and under what conditions is it "impermissible" and subject to "abuse" of the right; The purpose of this article is to examine this very issue.

Generally, three measures govern abuse of right:

“malice”, “fault”, and “social purpose”. Each measure encompasses a distinct domain. For instance, if fault is the sole measure, an action motivated by culpability constitutes abuse. Conversely, if malice is the sole measure, a culpable act lacking malicious intent would not be considered abusive, and it is permitted. Therefore, a single act might be deemed a legitimate exercise of a right and permitted under one measure but an abuse of that right and impermissible under another. Consequently, identifying the applicable measure or criterion holds significant importance.

While French Civil Procedure code explicitly prohibits the abuse of rights, it fails to articulate the specific measure and regulations governing such abuse.

Judges of the Supreme Court of France emphasize that simply “incurring damages” or “refusal of the application” does not necessarily constitute abuse. Conversely, merely “render judgment in favor of a person” does not automatically preclude the possibility of abuse. Analyzing judicial decisions, particularly those of the French Supreme Court, reveals a traditional rule for abuse of rights: exercising a right with “malice”, “bad faith” and “gross error tantamount to fraud”. All three measures can be summarized under “good faith”. However, further analysis of supreme court decisions suggests that justices do not consistently adhere to this traditional rule. In many instances, the focus leans towards the principle of fault. This inconsistency in judicial interpretation leads French jurists to posit that the measure governing the abuse of rights in civil proceedings is not singular. Instead, it hinges on a confluence of factors, including “obligations of a party to dispute, “the level of diligence expected under specific circumstances,” “the extent of damages incurred, “the methods employed,” and “the type of right abused.” These factors could place the applicable measure somewhere between good faith and fault.

In Iranian code, the following factors suggest a distinct measure for abuse of rights: (a) note to Articles 109, 133, 139, and 515 of the Civil Procedure code; (b) the distinction between the right to sue and the underlying right; and (c) attention to the foundation of abuse in civil proceedings (purpose of proceedings, public order, and the role of ethics). These factors collectively point towards a measure that defines abuse of rights in Iranian civil proceedings as “exercising rights for purposes other than lawsuit.” This measure only partially aligns with the three principles mentioned above. For instance, the “intention to harm” measure focuses solely on the intent to inflict harm, excluding other motivations such as collusion between disputing parties. On the other hand, the “social purpose of the right” measure emphasizes not just the user's motivations but also the objective outcome of the action. Even if the right-holder is unaware that their actions deviate from the social purpose of the right, their actions are still considered abusive. In essence, the “social purpose” measure is objective and outcome-oriented, while the Iranian measure is subjective, focusing on the sole intention of asserting a right or presenting a defense.

While Iranian code implicitly addresses the abuse of rights through scattered examples, the lack of a unified and explicit framework creates the potential for misinterpretation. To eliminate ambiguity and acknowledge the significance of this issue, it is suggested that the Iranian legislator incorporate a clear and concise definition of the right to lawsuit in the initial articles of the Civil Procedure code, which typically establish procedural principles. A clear definition of what constitutes abuse of these rights should also be established.

Keywords: Evasion in law, fault, , Legal Principles, Good Faith, Malice.



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