



LEGAL REVIEW OF APPARENT ADVOCACY IN IRANIAN LAWS

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Abstract:

Apparent advocacy is one of the main components of appearance theory. The importance of apparent advocacy is evident since lawyering or advocacy has a great importance along a significant role in facilitation of legal relationships. Individuals can benefit from lawyering entities in the sense of making personal contracts by using representatives. Lawyering plays an important role in terms of facilitation of transactions and contracts. In fact some peoples' job is to make contracts while representing other individuals. The rules and regulations of advocacy have been set in support of individuals in order to make people motivated towards interacting with lawyers so that this entity is able to play its role in flow of capital and boom of trades. In other words, the domain of advocacy must take a step further than the sole lawyer-client relationship and instead, its sentences should be redistributed based on supporting social trust. An interesting solution for creating trust towards lawyers amongst the public is supporting for legal trust in credible appearance which is followed by apparent advocacy. This paper elaborates on concept, instances, and conditions of realization and impacts of apparent advocacy.

Keywords: contract, advocacy, apparent advocacy

1. Introduction

Credibility of actions of a lawyer depends on two things. A person who makes a contract or undertakes legal actions on behalf of another person will only issue permissions if he or she has the authority to do so. In fact, a person can only make contracts on behalf of another person when he or she is authorized for action. In other words, the client should have obtained legal action authority due to explicit or implicit permission.

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Submission of authority is realized through signing an advocacy contract. In this process, the client provides the advocate with authority for representing him/her for accomplishment of something. The client sets and specifies the limits of lawyer's authority in the advocacy contract. In addition to explicit permissions of the client, norms evidence and customs are considered as authorizations of lawyers.

Usually clients are not aware of the entire details of advocacy affairs at the time of submission of authority and therefore, not every specific point is explicitly written in the contract. Therefore, in addition to the explicit permissions, the lawyer should also empathically act autonomously in specific situations considering the norms and benefits of the client while being adhered to the preset limits and permissions allowed by the client.

If the advocate exceeds the limits set by the client or disregards the benefit of the client in his/her actions, then the advocate's actions are ineffective (Imami, 1998). According to legal principles, if the authority of an action is explicitly or implicitly delegated to another individual and also the advocate's actions do not exceed the limits set by the client, then the client is obliged to adhere to the commitments. Otherwise, the actions of the lawyer are only considered as curiousness and the client will have no necessity for adherence to commitments. Still in some cases, it is observed that a person acts on behalf of another person and the conditions and situations also show that a lawyer-client relationship exists between the individuals, and then the third person trusts the representative and signs a contract with him/her. In this case, the third person considers the representative as a real advocate and signs the contract or facilitates the legal act. In this case, the type of advocacy is named as apparent advocacy which is performed by an apparent advocate who is not a legally authorized person.

In apparent advocacy, individuals put legitimate trust in apparent situations, consider a person as the real advocate of another person, and then contract with him/her. Here the question that rises is that if the third person with good will is worthy of support? Or shouldn't there be any support for transaction safety and security, speed of commercial transactions and respect for individuals' legitimate trust?

In apparent advocacy, two conflicting benefits are confronted with each other. On the one hand, there are client's benefits. In this case, the apparent client has not legitimately delegated anyone. Therefore, the representative or the apparent advocate acts on behalf of the client while exceeding the limits that could have had been set by the client. In addition, the apparent advocate considers him or herself obliged for adherence to commitments which he/she doesn't approve. On the other hand, there are the benefits of the third person who has put a legitimate trust in apparent status of the contract. Apparent advocacy removes this conflict of benefits. It also officially recognizes necessities such as transaction safety, maintenance of public trust and facilitation of capital flow. In this regard, not unlike the real type of advocacy, apparent advocacy also creates commitment for people. By an apparent advocacy, the

hypothetical client is also obliged to adhere to his/her commitments in return for the actions of the apparent advocate. The apparent advocate is removed from the relationship between sides of the contract and the hypothetical client should accomplish his/her part of the contract signed between him/her and the unauthorized person or client who has exceeded the authorization limits (Malaurie, 1988).

1.1 Apparent advocacy in Iranian Laws

The concept and effects of apparent advocacy are in conflict with legal rules and principles in the sense that the apparent advocate is obliged to commit an action for which no permission was delegated to him/her by the client. But still, the concept of apparent advocacy remains still in Iranian Laws. The present paper is aimed at reviewing the apparent advocacy in laws and jurisprudence.

1.2 Apparent advocacy in jurisprudence

This type of advocacy is approved for signing contracts and the lawyer and client can both terminate it at their will. After termination, the advocate or the lawyer is no longer allowed or permitted to perform any advocacy. The instance of apparent advocacy in jurisprudence is attendance to advocacy after being dismissed. In terms of jurisprudence, there are certain disagreements regarding manner of dismissal of the client and effects of the former. There are also different theories stated in this context. According to the view held by most jurists, although that the effects of dismissal are not dependent on declaration of dismissal to the other side, but dissimilar to these conventions, the advocacy is only terminated upon declaration of dismissal to the lawyer (Shahid Saani, 1402 A.H).

On this basis, prior to being made aware of dismissal, the lawyer is approved to continue his advocacy since advocacy is only terminated through declaration of the word of dismissal to the lawyer. As an example, the word sent by Imam Sadeq to Hasham-Ibn-e-Salem is referred to: in this narrative, Hasham asks Imam a question regarding a person who hired an advocate for signing two contracts with presence of two witnesses. After that the lawyer had left the client, the client said in public that be aware and be witness that I dismissed him of his advocacy. It was questioned that what is the sentence of the action that was done prior to being dismissed? In return, Imam Sadeq answered: if the advocate does the action before being dismissed, whether the client is satisfied or not, the action is ineffective. Then it was questioned that what if the lawyer had done the action prior to being notified of dismissal? In this case, Imam Sadeq answered: if the lawyer follows up the task after being authorized, the effectiveness of his actions remain until the delivery of the word of dismissal.

According to this narrative, it can be concluded that advocacy continues until the delivery of the word of dismissal to the advocate. Also the actions of the lawyer are not considered as ineffective since the realization of dismissal depends on deliverance of the word of dismissal to the lawyer or advocate. In this theory, there is difference between termination of advocacy and termination of permissible contracts. In terms of permissible contracts, termination is realized upon will and awareness of the other side of the contract about this will has no effect. In contrast, termination of advocacy significantly depends on deliverance of the word of termination or dismissal to the lawyer. Jurists have also made reference to rational reasoning in terms of continuity of advocacy until deliverance of dismissal word:

- a) The appearance of the situation of signing the advocacy contract confirms the legitimacy of advocacy until deliverance of dismissal word. In this regard, it has been described that when a person becomes an advocate for performance of an action on behalf of another person, the appearance signifies the continuity of advocacy and this appearance continues until deliverance of dismissal word to the lawyer. After that, the word of dismissal was delivered to the lawyer, the appearance breaks and advocacy contract is terminated.
- b) Avoiding damage implies the continuity of advocacy until deliverance of dismissal word. This is because if the termination of the advocacy contract is accepted prior to deliverance of the word of dismissal, then damages or harms may be done to the lawyer or third parties. Therefore, this principle implies that actions of the lawyer are considered as effective until deliverance of the word of dismissal.
- c) Based on order for doing a task and prohibition of doing so, continuity of advocacy upon deliverance of the word of dismissal is justified. In this regard it has been described that while signing an advocacy contract, the client orders the advocate to do something and therefore, the advocate is tasked with some specific action. Termination of this advocacy contract means that the lawyer is prohibited to do that work and this prohibition is only effective when the lawyer is made aware of the will of the client. Therefore prohibiting the advocate from an action without making him/her aware of his/her dismissal is not credible. Considering this content, the advocacy continues until the deliverance of the word of dismissal to the lawyer or advocate (Sheikh Toosi, 1401 A.H).

2. Apparent advocacy in Iranian laws

The following is dedicated to interpretation and explanation of the article 680 of the civil law and contrasting it with apparent advocacy

2.1 Article 680 of the civil law

Permissible contracts are disappeared with termination and therefore, no requirement remains for the sides of the contract. Termination of contract is completely changed in the article 680 of the civil law. In this article, it has been stated that the entire actions of the lawyer towards his client are considered as effective until deliverance of the word of dismissal. Considering these content, one may need to recognize the basis of this exceptional sentence.

Some people believe that this article is inspired from the famous code of Islamic jurisprudence which is documented in narratives about Imams and prophets. This article is not considered for in any other context than advocacy. In addition, signing an advocacy contract does not have any feature that requires the former. Yet no other basis can be proposed for it (Imami, 1999).

There are also some people who believe that the article 680 of the civil law has no juridical history and that it is inspired from the article 2008 of the French civil laws. Therefore in order to interpret this article, one must refer to French civil laws (Amiri, 1988). This theory is not correct since this article can be found in sentences issued by Islamic Imams. On the other hand, the criterion in French civil law's article 2008 is awareness or unawareness of third parties regarding dismissal of advocacy. Therefore, in our civil law, the criterion is effectiveness of actions of the lawyer and deliverance of the dismissal word to the lawyer. In addition, the article 2008 of the French civil law has also considered for death of the lawyer along with his/her dismissal. The article 2008 of the French civil law implies that is the advocate was unaware of death of the client or his/her will for dismissing the advocate, what the advocate does during this period of unawareness is considered as effective.

Some people consider the basis of this article as maintaining the security of legal transactions. The entity of apparent advocacy relieves the personal relationships of people from insecurity. However, the client might question the credibility of the actions of the advocate after dismissal but before declaration; in this case it should be mentioned that the entire actions of the advocate prior to being notified of his/her dismissal are considered effective and authentic.

The basis of the article 680 of Iranian civil law must be considered as avoidance of damage and harm. By giving permission to the advocate, the client creates an apparent legitimate situation in which it is conventional to act. If termination of this apparent situation is in only in hands and upon will of the client, then the advocate may be still continuing working with third parties prior to being notified. This could harm the lawyer or even the third parties involved. In this regard, a sense of instability and insecurity is developed in legal relationships. Therefore, the legislator has considered the benefits of the lawyer and third parties and in order to avoid harms, the righteousness of actions of the lawyer are maintained until deliverance of word of dismissal to the lawyer (Langroodi, 2011).

Jurists consider the reason of existence of this article as special situations and therefore do not extend this article's sentence to death or insanity of the client. Some people consider the reason for existence of this article as avoiding occurrence of harm for the advocate. They believe that dismissing the advocate without notifying him/her may cause harms to the advocate. For example if the advocate sold a third party some edible product on behalf of his/her client and the client had consumed the product, the contract is considered as effective and appealing since the advocate was not aware of being dismissed by the client. Therefore, in order to avoid any harm or damage on the advocate or the third party, legislators have specified the article 680 of Iranian civil law. However, in addition to the article itself, we must know the source of its adaption as well.

Some people believe that this article is adapted from Imams' jurisprudence. This article is inspired from the famous code of Islamic jurisprudence which is documented in narratives about Imams and prophets. The legislator of Iran has also considered this fact and has stated that according to article 680 of Iranian civil law, the advocate's actions are considered effective until the deliverance of his/her dismissal word. In contrast to other contracts, the advocacy contract is only terminated upon notifying the advocate of his/her dismissal. Therefore, by taking a look at the appearance of the article 680 of Iranian civil law, it can be made clear that advocacy contract is terminated by dismissal of the advocate. However, considering an exceptional rule, the actions of the lawyer remain effective until he or she is made aware about being dismissed (Katoozian, 2006). Some other people also believe that this article is adapted from the article 2008 of the French civil law and that this article has no juridical history. This claim is incorrect and there are certainly specific instances in religious jurisprudence. In addition, the French civil law's article 2008 has considered for decease and death of the client and that the basis of the article is unawareness of the third party about dismissal. Therefore, it can be concluded that the article 680 of Iranian civil law is not adapted from article 2008 of the French civil law. However, it also seems that legislators have neither adapted this article from jurisprudence nor adapted the article 2008 of French civil law. Rather the legislator has combined both of the aforementioned sources and created an independent establishment. By this article, the task of a lawyer is terminated upon dismissing him, however in order to avoid any harm on the lawyer or third parties, the actions performed by the lawyer remain effective as long as the word of dismissal is not delivered upon the advocate. As soon as the advocate is made aware of being dismissed, his/her actions afterwards are considered as ineffective. Since this article has not mentioned the death of client it is similar to jurisprudence and also since it has specified that the actions of the lawyer remain effective until deliverance of the word of dismissal, it is similar to the article 2008 of French civil law.

2.2 Comparing and contrasting the article 680 with apparent advocacy

Apparent advocacy is realized when third parties put trust in apparent situations and mistakenly consider someone as another one's advocate and sign a contract with him. In Iranian law, the criterion for realization of apparent advocacy is awareness or lack of awareness of the advocate regarding his/her dismissal. In addition, the entire actions of the advocate prior to being notified about dismissal are considered as effective. However, in French laws, the criterion is not awareness of the advocate about his/her dismissal. Rather the criterion is the third party's awareness about dismissal of the advocate. According to article 2003 of French civil laws, the client can terminate an advocacy contract and by doing so, the act of advocacy is finished. But if there are third party individuals who have signed a contract with the advocate without being aware of the fact that he/she was dismissed, then the client is obliged to act to his/her commitments made to the third party individuals. In this regard, the article 2005 of French civil law implies that: a termination which has only been made aware to the advocate cannot be made reference to in terms of people who had made a contract with the advocate while they were unaware of his/her dismissal.

According to views and ideas held by jurists, in order to avoid any harm and damage to the advocate or third person, the advocacy and entire actions of the advocate remain effective until he or she is made aware of being dismissed. However the advocacy remains in effect as long as the advocate is unaware of the client's decision regarding dismissing him/her.

3. Conclusions

First of all it should be considered that advocacy is a type of contract at it needs both sides' agreement. The second point to be considered is that not only that the client can dismiss the advocate, but also the advocate can resign of the contract too. The third point is that advocacy is terminated as a result of death of the advocate or client, resignation of the advocate or dismissal of the advocate by the client. However, still there are two articles in Iranian civil laws which are in conflict with principles inferred from advocacy.

One of them is article 680: the entire actions of the advocate prior to being made aware of dismissal are considered effective.

The other one is article 681: after that the advocate resigned, the client remains there and that he/she can act as it was mentioned in the advocacy. If one could infer that the situation is comparable with general terms of contracts, then this advocacy is considered as permanent and real. However if one concludes that there is an exception, then the advocacy here is considered as apparent advocacy. In this case, the advocacy is not real but the civil law considers the advocate authorized for continuing his/her work based on certain reasons. Another thing to be considered here is that if the news of

decease or insanity has the same effects or not? It means that if the client dies and before that his/her death is made aware to the client, would the advocate's actions be considered as effective?

Jurists imply that the essence of advocacy is permission and that advocacy is based on permission. In this regard, the client permits the advocate to do whatever necessary in the domain of advocacy. In terms of face validity, it is realized through accomplishment. Therefore, the essence of advocacy is also obligation and acceptance. On this basis when the advocate resigns, this obligation and acceptance is terminated but the permission still remains. This inference is rationally disputable. Because advocacy is not mere permission and that it also specifies tasks for the advocate as well. Voluntary and autonomic effects are of two types. In one case, the effect of will has independence such as ownership. When you have sold a property, even if you change your will you will not be able to take your property back. However there is also some other autonomic effects which remain in the minds of those who have willed.

Iranian civil law has made adaptations from the French civil law and state that the advocate should be made aware of the decision of client regarding his/her dismissal. The basis is dependence on respect for legitimate trust which is obliged for the court or lawyer. Here a question may rise: what should be interpreted from the case in which the actions of the lawyer were effective but the court regarded them as ineffective? In this case, there must be an agreement which has been set aside from the official documents. This agreement is brought to the court but since the lawyer was unaware of it, then his/her actions would be considered as effective. Whether the court was aware of the issue related to the trial or the advocate was aware of that issue, in any case there would be enough evidence regarding ineffectiveness of the action that has been undertaken regarding advocacy.

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