Criminal Appeals Iranian Sources Difference and Similarity with Similar Institutions in the Criminal Law of England

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ABSTRACT

Man is naturally ever sinning and the possibility of pitfalls from anyone regardless of his academic and administrative positions is inevitable. Therefore, to protect citizens' rights against any mistake or aggression, which may be caused by movement or action based on a mistake or wrongdoing of judges, and in order to ensure a fair trial that is proper to judicial, predicted two-step (or several steps) of the judicial proceedings, that to handle a higher level is called appeal; and countries by provide excellent references in their justice system tried to adhere to this principle in their legal system. So that the review authorities of procedural and substantial from criminal voting were predicted in rights in Rome and France for the first time and it gradually moved to other countries. Subsequently this right for the first time in 86th principle Amendment to the constitution was recognized in 1324 AH; and in 1848 in the British penal system became legal status. Already in Iran Appellate court as the revision of onontologies (According to new Criminal Procedure law 1392 of certain subsidiaries of the Supreme Court may be cited as the substantive revision) and the Supreme Court essentially act as a reference substantial; and in the Criminal Law of England two Criminal Court (Royal court or criminal1) - Of course part of the duties of This Court of Appeal, is the reference of revise - and the Court of Appeal of Criminal Division as the revision of onontologies and the House of Lords and the High Court of Justice as the revision substantial.

INTRODUCTION

Committing the crime has long existed in human societies and has made a great concern for the victims of these crimes and crimes. Gradually, and with the understanding that in addition to the direct victims of crime, communities will also be threatened to commit it; Government intervention in the administration of criminal justice began and the prediction of relevant laws and judicial institutions, offenders are brought to justice to be accountable for penalty. In order to prosecute those who disrupt their actions and commit crimes, fundamental rights and freedoms of individuals should be considered and the principles of fair trial rights of the accused's defense should not be ignored in the name of security and public order. Possibility of pitfalls in human activities is inevitable and as it is known, human beings commit faults. The judicial process is also not an exception. The growing complexity of social relations cases and laws has questioned the assumption of the error in human judges. So, supporting people (which is one of the principles of fair trial and defense rights of the accused), seems necessary even though they have committed crimes and disrupt public order, against judicial error. Thus, in most countries, including Iran, efficient judiciary and justice supports this view by prediction of error of references to compensate for the lower authorities. Thus, judicial review of a decision by a higher court order is considered for this purpose. Accordingly, anyone convicted of a criminal offense to a conviction and sentence in a higher court shall be entitled by law to be revised.

Undoubtedly, appeal is considered as one of the fundamental components of the guarantees a fair hearing. Hence it has entered in the constitutions of many countries, International Documents on Human Rights (the Covenant on Civil and Political Rights, article 14, paragraph 5); American Convention on Human Rights (Row H, paragraph 2 of Article 8) and regulations of the International Criminal Court. Complaint forms of the vote (the appeal is one of them) have considered having two roles; On the one hand, the amended complaint is made possible and on the other hand, it has a proactive role; because the judge who vote might know that his judge will be critically examined and so he is encouraged to make accurate decisions. At the same time, predicting the complaints of votes, steps should be taken with prudence and caution. Although the party who is dissatisfied
with the votes of reference should be able to refer to another or to the same reference to judge about the difference, but it would not be in such a way that the hostility becomes impossible and the judge vote take the form of a draft that may be revise in various ways to count at the request of the parties.

2. Defining Review:

A) Literary definition: a review in literary terms means renew, refresh, resume it, or work, start up and revising means regarding something or written again and reevaluated it. In English language, phrases such rehearing and review is used.

B) Expression definition: a revised definition of its meaning is not away from the literal term. In fact, it is a protest or appeal and the judgment of the matter which is the review of the primary judge.

In other words, an audit and review actions the Court of First Instance; This means that the Court of Appeals is like the District Court and judges with respect to the subject than the provision of legal proceedings and judgments. The appeal is also defined in English law, too.

Oxford legal dictionary defines the research as:
"Research is demand of a higher court for judicial review of the decision of the lower court."

2.1. Nature of revision:

The nature of the appeal must be addressed through criminal sentences

Right now in law of Iran:
A) protest to the votes before certainty include:
1. Re-trial of sentences in absentia
2. Appeal (the New Law of Criminal Procedure, appeals from the judgments of the Supreme Court is certain to appeal, the appeal is called)

B) Protest to sentences before certainty include:
1. Re-Trial
2. Objection by the government

2.2. Types of appeal:

In general, in law of Iran and before the affirmation of the law and public and revolutionary courts in criminal matters, there have been two types of revision included: General and specific revisions.

A) General Revision: Legal documentation of general Appeal

Article 235 of the Criminal Procedure Law in the Public and Revolutionary Courts, the provisions of this article were previously stated in Article 18 of the Law on Public and Revolutionary Courts were and earlier, Articles 7 and 8 of the law courts of appeals opinion was devoted to it. Earlier, it is repeated in articles 284 and the criminal procedures.

In this regard, Article 235 would require:
"votes of public and revolutionary courts in criminal matters is a violation of the following:
Exporting the judge realized his mistake.
1. Other judges understood the wrong verdict, so that if the judge issuing such order, he will be punished.
2. Decision maker Judge does not have jurisdiction.... "This type of Appeal is called general since:
First, it includes all charges and, without exception and regardless of the verdict and penalty provisions contained in it.
Secondly, the Appeal did not have a deadline and one can use it at any time. However, this method was generally based on protest against penal sentences and principles of Sharia and was implemented almost from the beginning of the revolution and the amending it was limited from the law the Law on Public and Revolutionary Courts and so it is now Article 235 is not applicable in criminal matters.

B) Specific revision: in fact the specific revision is the most of Appeal and appeal in this concept is more applicable in the legal norm today.

The appellation of such Appeal, in spite of its fame and importance, is called specific since:
First, all the commandments and are not included while Appeal Article 235 which was a general one contains all ordinances and going.
Second, while Article 235 of Appeal had no time limit.
Third, only the beneficiary can ask for appeal while in general Appeal, all persons referred to in Article 235 of the Criminal law could ask for appeal.

Revision authorities in Iran:

According to the view that was followed in the legislation after changing the legal system considering revision provisions, there are two types of reference of revision.
One is the revision of substantive law of criminal procedure, court of appeals and certain subsidiaries of the Supreme Court (Article 477) and second, is the revision reference of the Supreme Court. It should be noted that the role of the Supreme Court of Appeal is different from its role as a reference and now, in accordance with the laws in force in criminal matters (as opposed to civil matters) is subject to appeal.

3.1 Form Revision References:
In general, it can be said that in Iran law, there is only one form revision reference which is the Supreme Court. Supreme Court is a reference which historical origins are to be found in France. However, in the Achaemenid period, judicial authority was established as the Supreme Court that unlike some of the tasks that were not part of the duties of the Supreme Court. Legislator in the Supreme Court has predicted two parts:

The branches and the prosecutors. On the principles of Justice Act approved in 1950 (article 50); the branches is composed of the two rooms (offices), one of which was legal and the other criminal.

In 1928 that number increased to three branches and in 1954 twelve branches were predicted to the Supreme Court and it was allowed that the number of branches, if necessary, be low or high (Amendment of article 150). According to Article 21 of the Law Reform Justice rules adopted by July 1977, three branches were added to the branches of the Supreme Court.

Supreme Court has 40 branches until 2001. Based on the Code of Criminal Procedure Law Amendment Act of 1982, affairs of the House Judiciary Committee, entitled “articles needed to form the branches of the Supreme Court”, the number of judges of the Supreme Court of branches was reduced to two; one was the chief and the other was councilor (Article 1 of the Act). Each one of the two must be at the discretion of the President or priest or ten years studying jurisprudence and has ten years of experience in the legal and judicial or and fully complied with Islamic law (Article 2, Note thereunder).

The branches of the Supreme Court has the common task of the Court which is to address the appeal requests received for the Appeals against decisions of the courts or the legal affairs of a criminal act. In addition, in cases of dispute between the competent judicial authority in the jurisdiction of the Supreme Court and also in cases where it should be, the competent authority of the Supreme Court shall determine subject to a branch of the Supreme Court and referral is appropriate to pass judgment. General Board of the Supreme Court is in the same area branches which are formed for members.

References Substantive Revision:
We have revised the substantive rights of only two references (one of the bodies created by the new law) are to review and audit the Court of First Instance.

A) The Court of Appeal: The Court is in the criminal justice system and in every province according to the rules of criminal procedure and to revise the entire non-deterministic vote unless the Supreme Court's jurisdiction. Appeals court session attended by two members of the quorum after consideration by the President or by a majority vote of the counselor (Article 20, Act in 2002).

B) According to the new law, the Court of Appeal or a Judge of the chief alternate’s membership is made up of two advisors (Article 426). While Article 20 of the 2002 of the Appeals court is the reference to the decisions of the General Courts of Criminal Appeals of the State and revolution in the field without specific court decisions in accordance with the name, the vote is uncertainly cited.

Second, according to the conduit law, the appeals court will recognize the presence of two which based on the new law has three official members.

B) Specific branch of the Supreme Court: This branches is created under the new law in accordance with Article 477 of this Act, the Supreme Court is allocation of branch which is formed according to the chairman of the Judiciary and has the headquarters of the Supreme Court in Qom and Mashhad and the capital so the branch location may also be these sites.

4. The Jurisdiction of Reference for Appeals:

4.1 The jurisdiction of the Supreme Court:
According to Article 233 of the Criminal Procedure Act, 1999, public and Revolutionary Courts of Appeals are the jurisdiction reference of each province; except in the following cases where the revision is done by the Supreme Court:

1. Offenses sentenced to hanging or stoning.
2. Offenses sentenced to amputation, or death penalty.
3. Offenses sentenced to imprisonment for more than ten years.
4. expropriated property.
4.2. The competency cases of the court:
In some cases, the charges and the penalties prescribed by law are not so important to require reviewing the cases. Rather, the legislature considers the judgment final in this regard and is confined to a stage of maturity. This will not appeal to some opinions, but the number of cases is too small to say, the more votes of the criminal courts have appeals and it is axiomatic that all opinions are revised and the contrary is in fact exceptional.

4.2.1. Offenses revisable in the appellate court are:
1. Offenses under the law (except stoning and crucifixion), respectively.
   It should be noted in this regard that the current charges subject to amputation can be revise by the court located in the Province. However, before passing of the Act 81, they had to be revised by Supreme Court.
3. Confiscation of property more than one million rials:
4. What is meant by the phrase, regardless of absolute confiscation, it can be appealed to the Supreme Court?
3. Offenses which under the Act shall be required to be paid more than a fifth of total compensation.
   Payment of one fifth does not mean the compensation types or composition or concentration shall not affect the authority.
4. Crimes for which the maximum penalty is three months imprisonment or flogging or a fine of five hundred thousand rials.

5. References to revise the law in England:
5.1 References of revision:
In English law, unlike the law of Iran, another court has jurisdiction and proceedings in addition to the Supreme Court which is known as Supreme Court justice.

A) The Supreme Court: the term Supreme Court of British law is used for a portion of the House of Lords doing legal work which in fact, it is the Appellate Committee of the House which has been selected. on the composition of the Supreme Court of England, it should be noted that in addition Court Chief Justice, 9 and 12 of the law lords are in the House of Lords which in certain cases the maximum number of judges ruled that is 12 people may increase. Due to shortage of judges in the House of Lords, Act of Parliament in 1876 AD has decreed that at least two judges on behalf of Great Britain and Scotland are appointed by the monarchy.

B) The High Court of Justice: Before talking about the structure of the court, it should be noted that the lawyers disagree on the Persian translation and some consider translation of the High Court of Justice as incorrect and called it a city or a legal court one. But some others based on the literal meaning of the words, had translated it into Supreme Court justice. The court is divided into three major branches; each branch in turn has some subdivision. The main branches are:
1. Chancery Division
2. The Family Division
3. The Queen’s Bench Division

5.2. References of substantive revision:
In English law, unlike the law of Iran, two authorities revise to verify rulings by the lower courts,

A) The Court of Appeal: in English Law, generally court will be formed, with three judges but the cases that are difficult, the quorum necessary for the establishment and formalization of the meeting will be dependent on the presence of five or seven judges. Judges of the jurisdiction and proceedings in the Court of Appeal's judgment are as follows:
1. the Judge of the judges or President of Court of Appeal
2. Judges of Appeal
   If necessary, and in certain cases, the Supreme Court judges who are members of the High Court of Justice will do the job requested by the President of the Court of Appeal.
1. Following the entry into force of the Act and the Public Order Act 1994, the judges of the criminal courts may be selected as Branch judges.
2. In addition to the above, the Chairman of the Supreme Court (the highest judicial authority in the United Kingdom) and former Heads are ready-to-serve, also, each of the judges of the Supreme Court of Appeal ready to serve, can also appeal the judge.

C) Criminal Court: it is called Royal Court and the Royal Court and some use conventional expressions of criminal court for matching with our justice system which did not existed until 1971. The combination of the judges of this court says that this court is composed of the following judges:
1. Full-time Judge of the criminal courts
2. Part-time judge
3. Supreme Court judges
6. The competent authorities of revision:

6.1. The jurisdiction of the Supreme Court:

In the following cases, as the Supreme Court is considered as the Appeal reference of the sentence:

1. Appeal of Supreme Court rulings branch offices of both decrees which directly from the magistrate court (peace) has been referred to the Supreme Court and then decrees of the court is to consider an appeal to the Court of Criminal and then the judgments of the Supreme Court of Appeal has revised it.

2. Appeal by criminal division of the Court of Appeal judgments that in consideration of the provisions of the Revised Penal Court (Article 33 of the Criminal Appeal Act 1968).

6.2. Jurisdiction of the High Court of Justice:

6.3. In general it can be said that the jurisdictions of the Supreme Court are:

1. Rulings by the Court of Appeal Peace (Magistrate) issued and presented directly to the Supreme Court (Paragraph 1 of Article 11 of the Law Magistrate Courts).

2. Rulings by the Court of Criminal Appeal as consideration for revision of the provisions of the Peace Court.

Appeal rulings have been issued by the Court of First Instance and the judgment of the official proceedings. It should be noted that the Supreme Court since 1999 was the only jurisdiction in the first two cases, but with the passage of the law to achieve justice in these years, this possibility was provided that Criminal Court of First Instance judgments issued rulings in the Supreme Court be revisable and two things are necessary about the competence of the Supreme Court of Appeal:

The first point is that, although the provisions of the applicable revision of the peace courts and criminal courts (for a description of the passage) in the Supreme Court, however, there is no chance to appeal in exceptional cases and decision of the Criminal Court are final and amenable to appeal in the Supreme Court that includes:

1. provisions relating to licensing (certification)
2. Verdicts issued in respect of different games.

The second point is that, although the provisions of Appeal is both of conviction and sentence, however, in the case of Tucker against chief of the royal court in which he Appeal against the sentence issued by the court magistrate should be considered in criminal court, not the Supreme Court except in special situations and problems that are beyond the scope of jurisdiction of the magistrate court.

6.4. Cases of criminal jurisdiction

6.5. In general criminal jurisdiction include:

1. Deal on indictment for crimes within the jurisdiction (Article 46 Law on the Supreme Court).
2. Revision of the verdicts of the Magistrate court.

The penalty for a person convicted of an offense which a Magistrate court and then transferred to the criminal court penalties.

Conclusion:

Due process model and the model for the administration of criminal justice is done especially in recent years at the national and international and is considered by several legal entities and the drafting of international contracts and documents so that steps toward a fair trial, including appeal rights considered by the international community and international organizations and then of course the other countries were required to follow it.

In law of Iran, crimes are divided in the criminal courts and the penal and the revision of the provisions relating to licensing (certification) and the mode Due process model and the mode of criminal jurisdiction include:

Cases of criminal jurisdiction

1. Deal on indictment for crimes within the jurisdiction (Article 46 Law on the Supreme Court).
2. Revision of the verdicts of the Magistrate court.

The penalty for a person convicted of an offense which a Magistrate court and then transferred to the criminal court penalties.
this is not in our penal system and the reference is used as the original revision of this reference for the revision of some of the ideas.

REFERENCES


