



How to cite this article:

Kamankesh, M. R., & Hamzeh Loei, H. (2027). Analysis of the Principles and Formalities Governing Civil Procedure in French Law with Emphasis on the Rules of Formal and Substantive Nullity in the Code of Civil Procedure. *Journal of Historical Research, Law and Policy*, 5(4), 1-16. <https://doi.org/10.61838/jhrp.321>



Article history:
Original Research

Dates:

Submission Date: 08 April 2026

Revision Date: 07 July 2026

Acceptance Date: 14 July 2026

First Publication Date: 15 July 2026

Final Publication Date: 01 July 2027

Analysis of the Principles and Formalities Governing Civil Procedure in French Law with Emphasis on the Rules of Formal and Substantive Nullity in the Code of Civil Procedure

1. Mohammad Reza. Kamankesh ¹ : Department of Law, Khom.C., Islamic Azad University, Khomein, Iran
2. Hassan. Hamzeh Loei ² : Department of Law, Khom.C., Islamic Azad University, Khomein, Iran

*corresponding author's email: as.m8.hamzehloei@gmail.com

ABSTRACT

This study examines the principles and formalities governing civil procedure in French law and, through explicating the fundamental dichotomy between “formal defects” and “substantive defects” in procedural acts and measures, analyzes the criteria of nullity and the mechanisms for remedying such defects. In the first section, formal nullity and its scope are analyzed on the basis of rules such as the necessity of explicit statutory provision for nullity, the requirement to prove prejudice, the timing for raising procedural objections, and the possibility of curing defects through subsequent procedural actions. This section demonstrates that French law, through a functionalist approach, recognizes formal nullity only where essential procedural formalities have been violated or substantial prejudice has occurred. In contrast, substantive nullity, which pertains to legal capacity, standing, or representation, may be invoked without the need for an explicit statutory provision or proof of prejudice and is subject to more severe sanctions because it concerns the fundamental validity of judicial proceedings. The study further addresses issues such as the nonappearance of litigants, the legal consequences of absence, and the role of these matters in the validity of judicial decisions. Another major section of the research is devoted to the “principle of concentration of legal grounds,” whose evolution in French judicial practice—from the traditional position to the Cesareo decision and subsequent reforms—is critically analyzed. The study also evaluates the criticisms directed against this principle, its positive and negative implications, and the modifications introduced through judicial practice. Furthermore, the compatibility of this principle with Iranian law, as well as the rule prohibiting the introduction of new claims at the appellate stage, is examined. The findings indicate that French law, through the precise regulation of formal and substantive procedural rules and the establishment of a balance between procedural efficiency and judicial fairness, provides a coherent model for comparative analysis within the Iranian procedural system.

Keywords: *Civil Procedure, French Law, Formal Nullity, Substantive Nullity, Principle of Concentration of Legal Grounds.*

Introduction

Civil procedure is a set of principles and formalities whose purpose is to discover the truth and arrive at reality between the parties to a dispute. Procedural principles, such as the right of defense, are so important that they may



be called “rights,” because they are rooted in natural rights, reason, custom, religion, and culture and are therefore fundamental, stable, and non-derogable. By contrast, procedural formalities are essentially instruments for the administration of justice; since they are not connected to the essence of justice, they may be eliminated, modified, or changed. The legislature establishes these formalities according to the conditions of time and place; examples include increasing the number of criminal security orders from five to ten in newer laws, or the authority of the Supreme Court to correct formal errors in judgments under Article 403 of the Code of Civil Procedure. In civil procedure, two fundamental values are involved: judicial justice and judicial security. Judicial justice requires accuracy and complete examination of disputes and may even regard the repetition of stages of adjudication as necessary for the realization of justice; however, judicial security emphasizes the necessity of the rapid and decisive termination of disputes. These two values may sometimes come into conflict: hasty adjudication may lead to error and referral of the case to higher courts, while excessively prolonged proceedings—even if just—are not satisfactory and result in the erosion of public trust. Therefore, the duration of proceedings is an essential element in ensuring the satisfaction of litigants and strengthening public confidence in the judiciary. Proceedings must be conducted within a reasonable time, in such a way that legal guarantees are preserved while the parties are not subjected to continuous tension and attrition. Prolonged proceedings, meaning the unreasonable extension of the adjudicatory process, is an issue that has been addressed both in Iranian law and in other legal systems. Article 6 of the European Convention on Human Rights also regards “trial within a reasonable time” as part of the right to a fair trial. In Iran, attention to the reasonable duration of proceedings has a long history; for example, during the Achaemenid period, a specific time was set to prevent trials from becoming prolonged, and settlement through arbitration was even suggested. In light of these issues, the main question is: What is the fundamental necessity of formulating the principles and formalities of civil procedure in Iranian and French law?

Civil procedure, as the framework for realizing judicial justice, plays a fundamental role in guaranteeing the rights of litigants and public trust in the judicial system. Procedural rules, principles, and formalities are not merely instruments for the administration of justice; they are also mechanisms that must establish a balance between accuracy in adjudication, the guarantee of the right of defense, and the reasonable speed of proceedings. Therefore, examining the foundations and necessity of formulating these rules is of particular importance, because any excess or deficiency in their regulation may weaken judicial justice or undermine judicial security. The significance of this study is especially evident because, in practice, the conflict between judicial justice and judicial security has become one of the fundamental challenges of the adjudicatory system. Hasty proceedings based on formalistic procedural requirements may violate defense rights, whereas prolonged proceedings—even when aimed at reaching a just judgment—lead to the exhaustion of litigants, reduced social satisfaction, and weakened public confidence in the judiciary. From this perspective, attention to the element of time and the concept of a “reasonable time for proceedings” becomes doubly important. A comparative examination of Iranian and French law in this field strengthens the necessity of the present study, because the French legal system, by precisely distinguishing between fundamental principles and modifiable formalities, has presented a relatively coherent model for balancing procedural speed and accuracy. Studying this model can help identify the strengths and weaknesses of Iran’s civil procedural system and provide a basis for proposing reforms or improvements to existing rules. Thus, in addition to its theoretical value, this study has practical and legislative functions and can play an effective role in improving the efficiency and justice of civil proceedings.

Theoretical Foundations and Research Background

Pursuant to Article 1, the Code of Civil Procedure is a set of principles and regulations governing the adjudicatory process before judicial authorities; however, its addressee is not merely the judge. Citizens and litigants must also know the proper method of filing a claim, selecting the competent court, proving claims and defenses, and understanding the scope of their rights and duties—an issue that plays a fundamental role in expediting proceedings and preventing their prolongation (1). The Law on the Civil Procedure of Public and Revolutionary Courts, enacted in 2000 with 529 articles, outlines the principal framework for hearing civil claims and is distinct from criminal claims, which are governed by criminal procedure. Civil claims concern private relationships, such as divorce, dowry, and maintenance, and are heard in civil courts on the basis of the formalities prescribed by this law (2). This law encompasses several key issues, including the jurisdiction of courts, that is, identifying the competent authority, the type of court, and territorial jurisdiction, public awareness of which can reduce prolonged proceedings (3); representation in litigation and the scope of attorneys' powers (2); the method of filing a claim through a petition and its formal requirements, as well as the institution of inability to pay litigation costs where the party lacks financial capacity (4); methods of challenging judgments, including objection to default judgment, appeal, cassation, and retrial; and arbitration as a private method of dispute resolution. At the conceptual level, the distinction between procedural principles and procedural formalities is of fundamental importance. Principles are rules such as adversarial proceedings, publicity of hearings, and the presumption of innocence; they have a fixed and immutable character, and their violation always entails the nullity of the judicial decision. By contrast, formalities are variable rules dependent on time and place, and their violation leads to nullity only when it is essential, with the determination of this matter left to the judge, known as "judicial nullity." The research background also emphasizes this distinction: principles are abstract, permanent, and general concepts that guarantee procedural justice, whereas formalities concern order and the exercise of substantive rights; legislative flexibility in departing from certain principles in claims of inability to pay litigation costs has also been emphasized; procedural principles have been described as the "foundations of adjudication"; and the difficulty of defining formalities and the need to provide criteria for distinguishing principled acts from formal acts throughout the adjudicatory process have been noted (1, 5, 6). Thus, the innovation of the present study lies in its comparative approach and substantive-formal analysis of these concepts, as well as in proposing a comprehensive criterion for explaining the relationship between procedural principles and procedural formalities.

Research Method

The method of the present study is descriptive-analytical, and the data are collected through library research; therefore, instruments such as interviews or questionnaires are not applicable, although databases are used. The analysis of information is also based on the description and content analysis of written sources, including books, articles, dissertations, and related studies.

Principles and Formalities Governing Civil Procedure in French Law

Formal Defects in Procedural Acts and Measures

An objection arising from a formal defect means an objection based on noncompliance with the law when drafting, submitting, and serving procedural acts and measures, whether the objection arises from the acts of the parties,

the judge, the judicial officer responsible for service and enforcement, Articles 648 and 649 of the Code of Civil Procedure, the court clerk, Article 1108, or other judicial personnel, Articles 724 and 725. Under the first paragraph of Article 114 of the Code of Civil Procedure, “no procedural act may be declared null on the ground of a formal defect unless its nullity is expressly provided for by law, except in cases of noncompliance with essential formalities or public order.” On this basis, the first condition for applying the sanction of nullity to a procedural act or measure is the existence of a pre-existing provision, except in cases involving the breach of essential formalities or public order (7-9). Even in the latter case, however, the mere breach of essential formalities or public order does not render the procedural act or measure null “unless the claimant proves the damage caused by this noncompliance with the law,” according to the second paragraph of Article 114. These two conditions, which embody two rules in French law, must be examined separately (5).

The Rule Requiring Nullity to Be Provided for in a Text

This rule, expressed in French law as *pas de nullité sans texte*, means that the legal rule itself must provide the sanction of nullity for the formal defect affecting the act or measure, as in Articles 56, 648, 649, 693, and 694 of the Code of Civil Procedure, which provide this sanction for acts of the judicial officer responsible for service and enforcement, or Article 1480 of the same Code concerning arbitration (7, 8). For example, Article 56 of this Code, concerning the summons, which is a type of document initiating proceedings and is sent to the defendant by the judicial officer responsible for service and enforcement, prescribes certain required contents, and the sanction for failing to observe them is expressly stated in the same article to be nullity. Therefore, if these required contents are not observed, the procedural act is null because the legislature has expressly provided for nullity. On this basis, the First Chamber of the Metz Court of Appeal held in a judgment that because the provisions of Article 164 of the decree dated 27 December 1985 were not included in the amended version of that article enacted on 21 October 1994, failure to send the summons to the court-appointed liquidator did not result in nullity, First Chamber of the Metz Court of Appeal, 11 June 2002. Nevertheless, although the concept of breach of essential formalities or public order in performing judicial acts and measures is highly complex, the rule mentioned above does not apply in such cases under the express wording of the second paragraph of Article 114 of the Code (5). In other words, if it is alleged that essential formalities or public order have been violated in performing a procedural act or measure, then regardless of whether a text has provided the sanction of nullity, the rule requiring nullity to be provided for in a text does not apply if the allegation is proven and the case falls within the relevant category. On this basis, irrespective of the concept of public order and the difficulty of identifying it in procedure, the Third Chamber of the French Court of Cassation, in a highly flexible approach concerning the concept of essential formalities, has held that what is meant by the “essential character of a procedural act is its connection with that which constitutes the reason for the existence of that measure and is indispensable for carrying out its purpose,” Third Civil Chamber of the Court of Cassation, 3 March 1955. For example, the case law of lower courts and the French Court of Cassation has regarded formal service of an appeal by a document lacking the signature of the judicial officer responsible for service and enforcement, Second Civil Chamber of the Court of Cassation, 19 January 1977, or formal service of an uncertified copy of a judgment by the court clerk, Toulouse Court of Appeal, 31 March 1980, as instances of breach of essential formalities. Similarly, in press and defamation matters, the Second Chamber of the Court of Cassation has held that formal service containing none of the legally required cautionary references, and therefore failing to comply with essential formalities concerning defense rights guaranteed by the Law of 29 July 1881,

constitutes a breach of essential formalities, Second Civil Chamber of the Court of Cassation, 7 May 2002. Identifying the instances of this statutory condition and excluding cases that do not fall within it has not been simple. Accordingly, in several judgments, the Second Chamber of the French Court of Cassation has introduced to the legal community examples that do not fall within Article 114, such as failure to state the surname of the natural person representing the legal person who is the appellant, Second Civil Chamber of the Court of Cassation, 14 January 1987, or failure to mention the name and title of the territorially competent judicial authority in the notice of judgment for bringing methods of challenge, Second Civil Chamber of the Court of Cassation, 17 December 1984.

The Rule That Nullity Is Not Applicable Unless Damage Is Proven

This rule, provided in the second paragraph of Article 114, means that whether the sanction of nullity is provided in a text or, as in the allegation of breach of essential formalities and public order, there is no need for it to be provided in a text, the claimant must prove the damage arising from the procedural act or measure; otherwise, the objection based on formal defect is inadmissible and will have no legal effect (5, 7). Some examples of the rule requiring damage in the judgments of the Court of Cassation and French courts are as follows: indication of an incorrect address in the appeal, Second Civil Chamber of the Court of Cassation, 28 May 2003; incorrect indication of the principal seat of the appellant, which is a legal person, Fourteenth Chamber of the Paris Court of Appeal, 9 May 2003; where the recipient of the procedural act was unable, because of the circumstances of service, to use the available methods of challenge in due time, Second Civil Chamber of the Court of Cassation, 22 April 1984; where ordinary service contained no indication, or even an inaccurate indication, regarding the nature of methods of challenge, Second Chamber of the Court of Cassation, 15 April 1981; failure to observe the extension of time arising from distance and geographical remoteness, Second Civil Chamber of the Court of Cassation, 4 June 1986; or formal service of a judgment on the person where there had been no prior formal service on the attorney, Paris Court of Appeal, 30 March 1981. Conversely, examples may be seen in the case law of this country that have not been considered instances of damage caused by a formal defect, such as where, despite noncompliance with the law, the addressee appeared before the court and had sufficient opportunity to evaluate and express views concerning his rights, Social Chamber of the Court of Cassation, 14 January 1988; where he was able to appeal within an appropriate time, Social Chamber of the Court of Cassation, 13 May 1986; where he was able to correct the erroneous contents served on him, Social Chamber of the Court of Cassation, 22 April 1982; or where the error was so obvious that it could not have gone unnoticed, Second Civil Chamber of the Court of Cassation, 20 November 1985. Unlike the general rules governing objections, an objection based on a formal defect may be raised as soon as the defect occurs and need not be submitted before a defense on the merits or a plea of inadmissibility, because Article 112 expressly permits successive reliance on such objections. Nevertheless, entering into a defense on the merits or being confronted with inadmissibility extinguishes the right to rely on the defect later, unless the basis of the objection was concealed or resulted from fraud by the opposing party, Court of Cassation, 1974 and 1991. On appeal, the objection may also be raised until the final submissions, 2001. Pursuant to Article 113, all formal objections must be raised simultaneously. Under Article 115, subsequent cure is accepted only where two conditions are simultaneously met: the right has not been extinguished, and there is no damage, Court of Cassation, 2002; Paris, 1978 (7, 8).

Substantive Defects in Procedural Acts

Unlike nullity arising from a formal defect, which concerns the implementation of the law in procedural acts and measures and may obstruct proceedings, an objection arising from a substantive defect is primarily an objection intended to ensure the implementation of the law in the exercise of the right of action and, especially, compliance with the law in the document initiating proceedings (5, 10). In other words, the right of action, which initiates proceedings, must be exercised in accordance with the substantive rules governing procedural acts and measures; otherwise, even if the act has no formal defect in the sense described above, it is regarded as invalid. Article 117 of the Code of Civil Procedure enumerates cases of substantive defect as follows: a) lack of capacity to bring proceedings; b) lack of capacity of a party or a person appearing in proceedings as the representative of a legal or natural person lacking capacity to exercise rights; and c) lack of capacity or authority of the person acting in court on behalf of a party. The case law of this country has also recognized the importance of substantive defects, which ultimately has led to a tendency to expand their instances, and it does not treat the cases enumerated in this article as exhaustive, Second Chamber of the Court of Cassation, 30 November 1977. Moreover, under Article 119 of the Code, unlike the conditions for applying objections based on formal defects, this objection, because of its nature, requires neither provision in a text nor proof of damage: "Objections of nullity relating to noncompliance with substantive rules concerning procedural acts must be accepted regardless of whether the person relying on them has been able to prove damage and regardless of whether such nullity has been provided for in an express provision." To better understand the concept of objection based on substantive defect, each paragraph of Article 117 will be analyzed in light of case law (7, 9).

Lack of Capacity to Bring Proceedings

This paragraph seeks to guarantee legal capacity to enjoy rights in proceedings; therefore, it concerns both the plaintiff and the defendant, although the latter situation occurs more frequently in judicial practice. The concept of this capacity must also be understood broadly so that it includes both the capacity of natural persons and the personality and capacity of legal persons. Accordingly, if a claim is brought against a deceased person, Second Chamber of the Court of Cassation, 13 January 1993; if it is brought by a commission, such as the Stock Exchange Commission, that lacks legal personality, Commercial Chamber of the Court of Cassation, 26 October 1993; if it is brought by a dissolved legal person, Commercial Chamber of the Court of Cassation, 30 November 1999; Commercial Chamber of the Court of Cassation, 14 June 2000; or if a limited liability company that has been converted into a joint-stock company again brings proceedings under its former type and form, Second Civil Chamber of the Court of Cassation, 8 July 2004, this defect has occurred, and consequently no validity can be attributed to the measure or action.

Lack of Capacity of a Party or of a Person Appearing in Proceedings as Representative of a Legal or Natural Person Lacking Capacity to Exercise Rights

Although some jurists have criticized the drafting of this paragraph of Article 117 on the ground that speaking of the lack of capacity of one of the parties to the proceedings has no instance other than lack of capacity to exercise rights and should have been stated under that title, the intended meaning is the lack of capacity of the representative known in this legal system as the *ad agendum* representative, or non-contractual representation, such as legal or judicial representation, as opposed to the *ad litem* representative, or contractual representation, such as

attorneyship in court (10, 11). Examples include the lack of capacity of the representative of a legal person, a joint-stock company, an institution, a company, a guardian, or a temporary judicial administrator, as referred to in various judgments. Mentioning examples from case law may better clarify the concept of substantive defect here: a summons not delivered to the representative holding proper authority, Paris Court of Appeal, 7 January 1980; a response to an appeal by a representative who was not legally appointed, Second Civil Chamber of the Court of Cassation, 22 June 1978, or who had been removed from his duties by court order, Second Civil Chamber of the Court of Cassation, 13 October 1976, or who had died, Second Civil Chamber of the Court of Cassation, 12 June 1991; an act by a mayor who lacked authorization from the municipal council, Third Civil Chamber of the Court of Cassation, 11 January 1984; or an act by a member of a syndicate that had not been authorized by its general assembly, Third Civil Chamber, 10 October 1990; Third Civil Chamber of the Court of Cassation, 17 January 1996; Third Civil Chamber of the Court of Cassation, 2 December 2000; Third Civil Chamber of the Court of Cassation, 6 May 2006. The foregoing examples in case law concern the failure of will to materialize in the case of a defect existing in non-contractual representation.

Lack of Capacity or Authority of the Person Acting in Court on Behalf of a Party

This situation is also similar to the previous paragraph, but it concerns ad litem representation, that is, contractual representation before the court. Some scholars have also considered it to include ad agendum representation that is not covered by the previous paragraph (10, 11). Various judgments have been issued in this field, each of which may be examined as an instance of this paragraph. Failure to introduce defense counsel before the district court, Commercial Chamber of the Court of Cassation, 23 April 1985; introduction of an attorney lacking competence to represent before the relevant judicial authority, Second Chamber of the Court of Cassation, 9 January 1991; failure to introduce defense counsel before the Court of Appeal, Paris Court of Appeal, 27 May 1981; and formal service of an act by a judicial officer responsible for service and enforcement outside the limits of his territorial jurisdiction, Second Civil Chamber of the Court of Cassation, 20 May 1976; Aix-en-Provence Court of Appeal, 22 November 1989; and Menton District Court, 12 June 1990. The latter situation results from a tendency to expand the instances in which this objection may be invoked, and some jurists have criticized it and proposed that in these cases the Court should use the concept of formal defect and treat the matter as falling within breach of essential formalities, which is more flexible (5). Another noteworthy judgment has also been issued in this country's law on the basis of this paragraph, and its study may be useful. The judgment states that, in view of Article 6(1) of the European Convention on Human Rights and Article 55 of the Constitution, the court must be independent and impartial; therefore, a counselor of the body resolving disputes between worker and employer must not appear as the representative or companion of one of the parties before the labor-management dispute resolution council of which he is a member. Otherwise, his act will fall within substantive defect and will be rejected, Bordeaux Court of Appeal, Social Chamber, 8 April 2002; Bordeaux Court of Appeal, 2 April 2002. This is because, although such counselors are in fact representatives of workers and employers, the concept of their representation is different from contractual authority to bring proceedings, and any act by them in this regard will be null and ineffective. In any event, from the perspective of application, this objection is subject to the conditions examined below.

Time for Raising the Objection

Pursuant to Article 118 of the Code of Civil Procedure, “objections relating to nullity based on substantive rules concerning procedural acts may be invoked at any stage,” and in this respect the French legislature, considering the importance of the matter, has not provided the temporal limitation imposed on objections of nullity arising from formal defects (7, 8). Consequently, in a case where the judgment of the Court of Appeal rejected an objection of nullity of a summons on the ground that some plaintiffs had died before the proceedings began, the Second Chamber of the Court of Cassation, regardless of the time at which the objection was raised, quashed the lower judgment because the appellant had not noted the death of the plaintiffs in the first-instance proceedings, Second Chamber of the Court of Cassation, 27 June 2002. Nevertheless, the fact that raising an objection based on substantive defect is not limited to the time when the defect occurred may give rise to abuse. Therefore, the second paragraph of Article 118 provides: “The judge may order a party who refrains from invoking these objections with the intention of prolonging the proceedings to compensate damages.” In addition, where the objection is connected to public order, the judge may invoke it ex officio and give effect to it, first paragraph of Article 120. For example, some judgments have held that the provisions of Article 55 of Decree No. 67-223 of 17 March 1976, which provide that a member of a syndicate has no right to bring proceedings before obtaining authorization from the general assembly, are connected to public order, Third Civil Chamber of the Court of Cassation, 14 May 1974, and that the Court of Appeal may even ex officio reject an appeal where a creditor has appealed in the process of liquidation of assets while a syndicate member did not participate in the proceedings, Commercial Chamber of the Court of Cassation, 23 January 1990. The second paragraph of Article 120 also expressly provides that, in any event, with respect to the first paragraph of Article 117—that is, where the person lacks capacity to bring proceedings—the court may ex officio invoke nullity arising from substantive defect and need not wait for an objection by one of the litigants. The matter of curing the ground of objection based on substantive defect is another issue that must be examined here.

Curing the Objection Through a Subsequent Act

The issue of “curing an objection through a subsequent act” in French law occupies a complex position within the distinction between nullity arising from formal defect and nullity arising from substantive defect. Unlike formal nullity, which is easily removed through a subsequent corrective act under Article 115, Article 121 presents an ambiguous and difficult rule concerning substantive nullity. According to this article, nullity is not applicable where the “cause of nullity” has disappeared by the time the judge gives his opinion. Both conditions—the possibility of removing the defect and the precise time at which it must be removed—are seriously debated. Jurists believe that determining the moment of the judge’s decision is not temporally precise and should be limited to the stage “before the close of arguments” (5, 7). Despite the statutory ambiguity, the French Court of Cassation has adopted a relatively coherent approach in identifying instances. For example, the Third Chamber held that where a co-owner who had brought proceedings subsequently became the heir of another co-owner after filing the claim, the objection was cured, 1 April 1987. Similarly, where a company was incorporated after proceedings had been brought and the general assembly declared the plaintiff competent to pursue the claim, the objection of nullity was deemed to have disappeared, 15 December 1986. In another judgment, introduction of an attorney in an adoption claim before the judge’s decision cured the nullity, 6 October 1998. Conversely, an objection arising from the issuance of a summons

in the name of a deceased person is not cured by the participation of the heirs in the proceedings, 13 January 1993. One controversial issue is the possibility of curing a substantive defect at the appellate stage. Some jurists distinguish between a situation in which the objection was raised at first instance and one in which it was not. In the first situation, the appellate proceedings also include the objection; in the second situation, however, raising it again is not acceptable, because appeal is intended to correct the decision of the first-instance court. In the final part, the effect of incidental claims on territorial jurisdiction is examined. Article 51 of the French Code of Civil Procedure provides that the district court hears incidental claims unless the claim falls within the subject-matter jurisdiction or exclusive territorial jurisdiction of another authority. This rule, similar to Article 37 of the French Code of Civil Procedure, applies where the connection between claims is necessary to prevent contradictory judgments. Therefore, in French law, the connection between claims may justify departure from territorial jurisdiction, except in cases of exclusive jurisdiction.

Nonappearance of the Plaintiff in French Law

In this country's law, a judgment is inter partes when it is issued after adversarial arguments; however, the Code of Civil Procedure has also treated the inter partes character of a judgment as a type of sanction and, in some cases, even without such arguments, has characterized the judgment as adversarial (7, 8). With respect to an absent plaintiff, the judgment has such a status, and some scholars have written that the concept of default judgment is here developed in an extreme manner and includes the nonappearance of a plaintiff who initiated the proceedings. This Code emphasizes that a judgment is inter partes where the parties or their representatives appear in the proceedings in accordance with the special rules of each authority, where representation may be mandatory or optional. Therefore, before authorities in which proceedings are conducted with mandatory representation by counsel under Article 752(1) of this Code, namely general courts, the issuance of a default judgment in the absence of the plaintiff is impossible. However, before specialized authorities where counsel is not mandatory, it is possible that the plaintiff, despite having summoned the defendant, does not appear personally, does not introduce a representative, and does not appear before the judge at the hearing. Article 468 of the Code provides for two situations here. First, "if the plaintiff fails to appear without legitimate excuse, the defendant may request a judgment on the merits, in which case the judgment shall be inter partes." Jurists have described this judgment as so-called "inter partes" or judgment in personam, a judgment that differs from a truly inter partes judgment. In any event, in this regard as well, the court's judgment on the merits must be reasoned and substantiated, and the court has no right to issue a judgment on the merits without the defendant's request, judgment of the Second Civil Chamber of the Court of Cassation dated 10 March 1988. Second, if the court cannot rule on the merits, it may either order another hearing or cancel the plaintiff's summons ex officio.

French Law and the Defendant's Absence

Where representation by counsel is mandatory, failure by the defendant to introduce counsel within the period set by the judge results in the judgment being rendered by default. Likewise, where representation by counsel is not mandatory, nonappearance of the defendant in French law leads to a default judgment, which is divided into two categories: the case in which there is a single defendant and the case in which there are multiple defendants (10, 11). The first case is also divided into two types of judgment: a default judgment and a judgment deemed inter partes. A judgment is by default where the defendant does not appear, the decision is final, and the summons was

not personally served on the defendant. A judgment is deemed to be a default judgment where the defendant does not appear, the matter is subject to appeal, and the summons was personally served, Article 473 of the Code of Civil Procedure. Thus, the French legislature has limited default judgment to a case in which, with respect to an absent defendant on whom the summons was not personally served, the matter is not subject to appeal. The second case is governed by Article 474 of the Code. Where there are multiple defendants who have been notified concerning a single subject matter, and at least one of them fails to appear before the court while the decision is subject to appeal and the summons was not personally served on the absent person, the judgment is deemed *inter partes* with respect to all of them. In other words, in order to prevent multiple *inter partes* and default judgments from being issued in a single matter, the legislature of this country has limited default judgment to cases where the matter is not subject to appeal and even one of the defendants has not appeared or the summons was not personally served on him. Otherwise, it is sufficient for one defendant to appear or for personal service to have taken place, and the judgment will be *inter partes* with respect to all of them. The former approach of the French legislature was different, in such a way that some scholars wrote in criticism that “the legislature here eliminated the obligation of renewed service on absent defendants in order for the judgment to be *inter partes* with respect to all, because experience showed that the search was always costly and yielded no result; one must note that for a judgment to become default, it was enough that only one out of ten defendants failed to appear or that the summons was not personally served on him; or where personal service had been made on twenty persons and only one failed to appear, the judgment became a default judgment, which led to a multiplicity of types of default judgments.” Nevertheless, the judge may not issue judgment before the longest period for appearance in relation to the first or second summons has expired. The judge decides concerning all defendants by a single judgment, unless the circumstances require judgment only with respect to some of them, Article 475. It must be added that in the law of this country, the legislature has sought, by providing for the effects of personal service and nonappearance, to distinguish between the causes of nonappearance. Nonappearance may result from fault or even bad faith, such as where the summons has been personally served on the defendant and he does not appear. It may also result from the defendant’s negligence, such as where personal service was not effected and he negligently fails to appear in the proceedings. Efforts have also been made to make default judgments very limited, to the extent that jurists today regard default judgment as very rare and do not believe that objection to a default judgment is an ordinary method of challenge. The general rule in this country’s law is that “even if the defendant has not appeared, the court may issue judgment on the merits,” Article 472, and the judge rules in accordance with the claim only if he finds it lawful, admissible, and well-founded.

Understanding the Principle of Concentration of Grounds Supporting the Claim

Among the conditions for the operation of *res judicata*, unity of cause has always generated the greatest controversy and debate in doctrine and judicial practice. In the French judicial system, the concept of unity of cause of action has undergone profound transformations in recent years. As noted, under Article 1351 of the French Civil Code, *res judicata* has no place in relation to a claim based on a cause different from the cause of a claim that was previously heard and adjudicated. For a long time, French case law and doctrine were based on the view that a change in the legal basis of the claim was sufficient to change the cause of action (12, 13). Therefore, bringing the same claim again between the same persons and concerning the same subject matter would not be barred by a plea of inadmissibility, *fin de non-recevoir*, provided that the claim was brought on a new legal basis. In 1994, the

Plenary Assembly of the French Court of Cassation, on the basis of Article 1351 of the French Civil Code and Motulsky's theories, emphasized the need for the threefold unity of parties, subject matter, and cause in order to apply the rule of *res judicata*. According to this judgment, where, in one proceeding, the plaintiff's claim for nullity of a contract on the ground of defect of consent is dismissed, the plaintiff may, in another claim, seek nullity of the contract on the basis of lack of a real price, French Court of Cassation, 3 June 1994. However, French courts were required to act on the basis of this judgment for only twelve years, because the judgment of the Plenary Assembly of the French Court of Cassation dated 7 July 2006 adopted a position contrary to this precedent. This judgment held that reliance on a new legal basis cannot create a new cause of action. As a result, a claim brought on a new legal basis is barred by *res judicata*. The issuance of this judgment led to a clear line being drawn between the concept of cause in relation to the principle of party control over the factual matters of the dispute and the cause referred to in Article 1351 of the French Civil Code. Thus, cause was understood as a set of factual matters that may be examined by the judge, not necessarily the matter legally characterized by the court, *qualifier en droit*. The result of applying this theory in case law was that judges could easily establish unity of cause between two claims and thereby declare the new claim inadmissible on the basis of *res judicata*.

Developments in French Judicial Practice

Developments in French judicial practice concerning the concept of unity of cause may be described as follows:

The Traditional Position of Judicial Practice

For a long time, and particularly with the issuance of a judgment by the Plenary Assembly of the Court of Cassation, judicial practice, by relying on the concept of cause in Article 1351 of the French Civil Code, distinguished the cause of judgment, *cause de jugement*, from the cause of action, *cause de demande*. In this view, the cause of action consisted of all the arguments relied upon by the parties to prove their claim, whereas the cause of judgment consisted of the legal and factual matters on which the judge relied in issuing the judgment. In fact, this interpretation is also consistent with the title of the rule: only matters that have in fact been "judged" fall within the rule of "authority of the thing judged," not all matters that the plaintiff mentioned in the petition or could have relied upon during the proceedings (12, 13). On the basis of this classification, if the legal basis of the new claim was a matter not relied upon in the final judgment, the new claim was not barred by *res judicata*. This theory objectively increased the plaintiff's chance of bringing the claim again. Under the same theory, bringing multiple claims to establish natural filiation, the subject of Article 340 of the French Civil Code, on the basis of different evidence was not barred by *res judicata*, First Civil Chamber of the French Court of Cassation, 21 September 2005. French case law adopted a similar position regarding claims for civil liability on different legal bases. Likewise, a contractual waiver of the right to bring an action for nullity based on fraud did not prevent a claim for damages under the general rules of civil liability, Commercial Chamber of the French Court of Cassation, 18 October 1994. During the same period, French judicial practice regarded the assertion of different grounds for the nullity of a contract in multiple proceedings as possible.

Judicial Practice After the Cesareo Judgment

French judicial practice then underwent a major transformation. During the decade leading up to the Cesareo judgment, judgments were issued that adopted a broad interpretation of the concept of cause of action, an

interpretation that considerably reduced the possibility of bringing the same claim again (8, 13). In addition, judicial practice reached the conclusion that discovering factual elements that had already existed after the issuance of judgment did not authorize the bringing of a new claim, even if the discovery of those elements could potentially change the outcome of the dispute in favor of one of the parties, Second Civil Chamber of the Court of Cassation, 17 February 1979. Of course, the existence of such conditions may constitute grounds for applying for retrial, Second Civil Chamber of the French Court of Cassation, 21 March 1979. Ultimately, on 7 July 2006, the Plenary Assembly, in a decision known as *Cesareo*, contrary to its previous practice, held that the parties to the dispute must, during the adjudication of the claim, rely on all grounds that may help prove their assertion. Otherwise, a mere change in the legal basis of the claim is not sufficient to create a new cause. As a result of the formation of this case law, French jurists and attorneys concluded that a principle known as the principle of concentration of grounds supporting the claim could be identified in French civil procedure. Thereafter, compliance with this principle was also declared necessary in arbitral proceedings.

Criticisms of the Principle of Concentration of Grounds Supporting the Claim

The criticisms directed at the principle of concentration of grounds supporting the claim show that this rule, contrary to the theoretical foundations and fundamental principles of procedure, has created serious consequences for the functioning of the French judicial system. The views attributed to Motulsky, which limit *res judicata* to matters that have been “effectively raised and adjudicated,” are not compatible with the implementation of the principle of concentration, because under his theory, a claim based on a new cause is rejected only where the plaintiff has acted in bad faith, not absolutely. The *Cesareo* judgment, by expanding *res judicata*, created a serious rupture with the meaning proposed by Motulsky and, before him, Vizio (8, 13). The first fundamental criticism is the conflict between this principle and the guiding principles of procedure. The principle of procedural good faith lacks a statutory basis, and the legislature has not provided any sanction for failure to state the truth. Therefore, punishing the plaintiff for failing to raise all grounds results in rewarding a defendant who also failed to disclose those grounds. In addition, the principle of concentration conflicts with the principle of party control over the factual matters of the dispute, derived from Articles 4 to 7 of the French Code of Civil Procedure. Compelling the parties to present all factual grounds violates the principle of defense rights, First Chamber of the French Court of Cassation, 4 December 1979, and may even amount to a denial of justice. The challenge is compounded with respect to legal grounds, because expecting the parties to possess full knowledge of the laws is unrealistic. The judgment of the Court of Cassation of 21 December 2007 exempted the judge from *ex officio* reliance on legal grounds, whereas some writers consider such a duty to be required by the principle of the judge’s completed powers. French case law then moved from concentration of grounds to concentration of claims, obliging both plaintiff and defendant to bring all claims arising from a single cause in one proceeding, Commercial Chamber, 6 January 2010; First Civil Chamber, 28 May 2008. This development has led to an unjustified expansion of the concept of the “subject matter of the dispute” and disregard for the parties’ freedom to define the limits of the dispute. Finally, although the European Court of Human Rights, in its judgment of 9 April 2015, did not regard this principle as contrary to Article 6, many jurists consider it a violation of the right to effective access to justice, because in a system where a significant portion of claims proceeds without counsel, requiring non-specialists to raise all possible grounds in practice weakens procedural justice.

Effects of the Principle of Concentration of Grounds Supporting the Claim

The principle of concentration of grounds supporting the claim, like the rule of *res judicata*, has two categories of effects: negative and positive. Its most important negative effect is the prohibition on bringing the same claim again on the basis of new grounds, a prohibition that applies to both parties. Under this approach, the plaintiff, after being unsuccessful, has no right to bring a new claim based on a different cause, and the defendant also cannot, after being condemned, bring a new claim by relying on a cause that he did not raise in the first proceedings (12, 13). French case law has adopted a strict interpretation in applying this principle to the plaintiff. Numerous judgments of the Court of Cassation emphasize that a change in the interpretation of case law after the judgment has become final does not constitute a new cause and therefore cannot serve as the basis for bringing the claim again, Second Civil Chamber, 18 October 2007; 5 February 2009; First Civil Chamber, 24 September 2009. Other judgments have likewise held that, once a final judgment is issued, the dispute is deemed closed in all respects, and the possibility of renewing the claim is permanently barred, First Civil Chamber, 16 January 2007; Third Civil Chamber, 25 April 2007. The negative effect with respect to the defendant was also established by the judgment of the Commercial Chamber of the French Court of Cassation, 20 February 2007. On this basis, the defendant must rely in the first proceedings on all existing factual and legal grounds, even if, because of failure to comply with time limits or formalities, he was unable to raise some of those grounds. The judgment of the First Civil Chamber dated 1 October 2014 also emphasized the same basis and deprived the defendant of the right to bring a new claim, an issue that clearly conflicts with the philosophy of *res judicata*, which is intended to prevent rehearing of matters that have been “adjudicated.” In its positive dimension, the principle of concentration requires the parties to raise all legal and factual grounds related to the claim in the same single proceeding. Moreover, the dominance of this principle has created a major transformation at the appellate stage. Previously, permission to raise a new claim depended on the criterion of whether it fell within the scope of *res judicata*, Second Chamber of the Court of Cassation, 8 December 2005. However, with the acceptance of the principle of concentration, claims relating to a single cause are examined only once. Therefore, the appellant may raise all claims connected to the subject matter of the dispute in the same proceeding, regardless of the previous limitations of Article 564 of the French Code of Civil Procedure and Article 362 of the Iranian Code of Civil Procedure.

Modification of the Principle of Concentration by French Judicial Practice

The extensive criticisms of doctrine and the judicial community regarding the strict consequences arising from the principle of concentration of grounds supporting the claim compelled the French Court of Cassation to modify the negative effects of this principle. The first direction of this modification was the acceptance of the possibility of bringing a secondary claim where circumstances changed after the issuance of the initial judgment. According to the judgments of the Second Civil Chamber, *res judicata* prevents the admissibility of a new claim only where the circumstances existing at the time of the first claim have remained unchanged. If subsequent events alter the legal position of the party against whom judgment was rendered, bringing a new claim will be admissible, 10 June 2010. The same Chamber stated in another judgment that where new circumstances occur and change the previous conditions, *res judicata* creates no bar, 10 July 2008. The second direction of modification is the narrow interpretation of the concept of “subject matter of the dispute.” The Second and Third Civil Chambers of the Court of Cassation, without entering into the question of cause, have enabled the bringing of a new claim by identifying a

difference in subject matter between claims. Examples include the distinction between a claim for performance of an insurance contract and a claim for damages arising from the insurer's advisory negligence, 10 November 2010; the difference between a claim for restitution and a claim for separation, 10 November 2009; and the distinction between nullity of a contract for fraud and a claim for reduction of the price, 11 January 2012. Thus, once a difference in subject matter is established, examination of unity of cause becomes unnecessary, and the principle of concentration does not apply (8, 13).

The Principle of Concentration of Grounds in Iranian Law

In Iranian law, the Code of Civil Procedure does not expressly provide the condition of "unity of cause" for the operation of res judicata. Article 84(6) of the 2000 Code of Civil Procedure and Article 198(4) of the 1939 Code of Civil Procedure refer only to unity of parties and subject matter. Nevertheless, prevailing judicial practice has often regarded mere unity of parties and subject matter as sufficient for the operation of res judicata, without considering the element of cause, and has rejected the secondary claim. By contrast, some legal writers have attempted, by interpreting the concept of "subject matter of the dispute" and incorporating cause into it, to justify the possibility of bringing claims based on different causes (12, 14). However, these views have not had a significant effect on judicial practice. Thus, it may be said that, in practice, Iranian judicial practice has, since the formation of the modern judiciary, adopted an approach close to the principle of concentration of grounds supporting the claim. In legal doctrine, most writers regard unity of cause as one of the conditions for the operation of res judicata. Katouzian, relying on the concept of "cause of entitlement" in Article 72(1) of the former Code of Civil Procedure, considers the subject matter of the claim to consist of the asserted right and its foundations (12). On this basis, a change in the basis of the right changes the subject matter of the claim and prevents the application of res judicata. For example, where a claim for rent is rejected because the lease relationship is not proven, it is possible to bring a claim for compensation for use. He also considers this analysis applicable to the defendant's defenses and regards the raising of a defense based on a new cause as possible. Nevertheless, Iranian judicial practice shows a different tendency. Unification Judgment No. 3746 dated 25 October 1959 of the General Assembly of the Supreme Court, reasoning that necessary defenses must be raised in the first claim, considered a subsequent claim based on a new cause to fall within res judicata. The same approach may be observed in other judgments, including Judgment No. 971/21 dated 14 February 1987 of Branch 21 of the Supreme Court, which declared that bringing a new claim for rent, even on a different basis, lacked legal authorization. Some appellate courts have likewise held, on the reasoning that the court in the first proceedings was necessarily required to examine all effective grounds, that subsequent claims based on new grounds also fall within res judicata, Branch 11 of the Court of Appeal of Golestan Province, Judgment No. 871100867.

The Rule Prohibiting the Bringing of a New Claim at the Appellate Stage

In French law, one of the limitations on the devolutive effect of appeal is the prohibition on bringing a new claim before the Court of Appeal. Article 564 of this country's Code of Civil Procedure states: "The parties may not bring new claims before the Court of Appeal, except a defense relating to set-off or a defense that negates the opposing party's claim" (7, 8). Likewise, under Article 565, if new claims have the same subject matter and objective as those pursued at first instance, they are not considered new claims, even if their legal bases differ. A petition cannot be regarded as new where it directly arises from the original petition and leads to the same results, even if it is based

on different causes or grounds. Under Article 565, claims are not new as long as they lead to the same results as the first-instance proceedings, even if their legal basis differs. Under the current French legal system, a new claim is one that changes the parties to the dispute, changes the status of the parties, or changes the subject matter of the claim. Conversely, a simple change in the cause or reasons, that is, the legal basis within the meaning of Article 565, does not give the claim the character of being new. Article 566 of the same law also provides for the possibility of raising accessories to the claim or matters that are considered incidental to the first-instance claim.

Conclusion

The examination of the system of nullity in French civil procedure shows that this system is built on a precise distinction between formal nullity and substantive nullity, and that this distinction is the most important factor in its coherence and efficiency. In formal nullity, the legislature, by accepting the principle of “no nullity without a text” and the requirement of proving damage, has prevented every procedural error from becoming an obstacle to the realization of justice. Thus, procedural formalities are not regarded as an end, but rather as instruments for guaranteeing order and accuracy in proceedings; instruments that may lead to nullity only where essential rules are violated or public order is affected. Accordingly, French law adopts a functional and flexible approach in the field of formal nullity, an approach that both prevents abuse of formal objections and makes it possible to correct and cure ineffective errors. By contrast, substantive nullity concerns defects related to capacity, standing, or valid representation and, from this perspective, has a more fundamental and serious nature. In this area, unlike formal nullity, the French legislature does not require proof of damage or the existence of a specific text and even allows the objection to be raised at any stage of the proceedings. Nevertheless, this freedom is not absolute, and in order to prevent abuse, the judge has the authority, within the framework of public order or where wrongful conduct is established, to use appropriate compensatory instruments and sanctions. Article 121 also shows that curing substantive nullity depends on the disappearance of the cause of nullity before the judge's decision, a matter that preserves the flexibility of the system alongside its seriousness. Overall, it may be said that French law, by balancing the authority of formalities, the protection of defense rights, the prevention of delay or abuse, and the possibility of curing objections, presents a relatively coherent and successful model. This model is also of comparative significance for Iran's civil procedural system, because it shows that the precise regulation of the relationship between formalities and justice can increase the efficiency, predictability, and public trust in the adjudicatory process.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

References

1. Tavakoli MM. A Brief Civil Procedure. 3rd ed. Tehran: Tarh-e Novin Andisheh; 2016.
2. Hedayatnia F. Philosophy of Family Jurisprudence. 1st ed. Tehran: Women's Cultural and Social Council Publications; 2007.
3. Abhari H. Civil Procedure 2: The Course of Proceedings from Beginning to End. Babolsar: University of Mazandaran; 2013.
4. Ebrahimi Za-A. A Study of the Causes of Prolonged Proceedings in Public Courts of the Islamic Republic of Iran. Judicial Law Quarterly. 2000(32).
5. Mohseni H. Formal and Substantive Defects in Civil Procedure. Private Law Research. 2014;2(6):139-59.
6. Karimi A, Mohseni H. The Principle of Freedom of Defense in Civil Proceedings. Legal Research Journal. 2011;1(3).
7. Cadiet L. Code de Procedure Civile. Paris: Litec; 2014.
8. Guinchard S, Chainais C, Ferrand F. Procedure Civile 2014.
9. Mohseni H. French Civil Procedure. Tehran: Enteshar Joint Stock Company; 2013.
10. Heron J. Droit Judiciaire Prive. 3rd ed. Le Bars T, editor. Paris 2006.
11. Vincent J, Ferrand F. Procedure Civile: Droit Interne et Droit 2006.
12. Katouzian N. Res Judicata in Civil Claims. Tehran: Mizan; 2004.
13. Cadiet L, Jeuland E. Droit Judiciaire Prive. 8th ed. Paris: Litec; 2013.
14. Katouzian N. Philosophy of Legal Science. 1st ed. Tehran: Enteshar Joint Stock Company; 1998.