
Examining Evidence to Prove the Claim in the Appeals Court

Bahar Daryan ¹

1. PhD student in private law, Qom University, Iran

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ABSTRACT

As the evidence is of special importance in different courts, including primary, appeals and appeals the legal requirements governing the evidence in the appeal stage in legal claims is one of the important topics of the appeal, therefore, in this article, which is prepared and arranged in a descriptive and analytical method, the basic question is which legal requirements govern.

The results of the research show that legal laws such as civil procedure have a special order for presenting and proving evidence in the appeal stage. Also, in the appeal stage, the failure to express the reason in the initial stage and the lack of evaluation of the reason in the initial stage should be observed. It is worth it. It should be noted that in the presentation of evidence at the appeal stage, requirements such as the principle of effectiveness, the principle of relevance, the principle of citation and the power of proof must be observed

1. Introduction

Statement of the problem:

In the domestic legal system and laws, there are requirements for the presentation of evidence in the courts. This mechanism and requirements are considered for the presentation of evidence by the parties and their examination by the judge both in the initial stage and in the appeal stage. which ultimately leads to the issuance of judicial opinions, which in this case will be closer to the truth and justice due to the presentation of proofs. In this regard, some challenges and issues will be analyzed in this article:

In this article, we want to know whether it is legally possible to present evidence to prove the claim in the appeal stage like the initial stage.

From the legal point of view, what are the differences and similarities between the presentation of proofs of the lawsuit in the initial stage and the appeal?

1.The necessity and importance of research:

Since, from the point of view of the governing legal proceedings in the country, the issue of appeals from primary decisions is considered quite important, and in society, for many people, including lawyers, lawyers, law students, as well as citizens, the matter of appeals and in addition, the presentation of evidence at this stage of the lawsuit is very important. It is considered important, therefore, the processing of this issue, i.e., the different conditions of proof of the claim in the appeal stage and the difference between the system governing the presentation of evidence and the primary stage, as well as the requirements governing the presentation of new evidence in the appeal stage, will be important, and generally dealing with this issue And solving the ambiguities governing it can solve many concerns, therefore, addressing this issue in the form of a scientific article is of particular importance.

2 .Objectives considered in this article:

Explanation of the difference between the proofs of the lawsuit in the initial stage and the appeal stage

Explanation of the conditions for presenting a new reason at the appeal stage

Explanation of the legal requirements governing the presentation of proofs at the appeal stage

3. Research method:

The current research has a theoretical research method that is mostly carried out with a descriptive and analytical method. Therefore, since the topics are theoretical and do not include the practical aspect of the research, questionnaires and data analysis have been avoided, so it can be said that the research method of the research will be qualitative and developmental.

The method of gathering information for the current library research will be done by taking data and recording data in computer files by referring to internet sources such as books, articles, magazines, newspapers, research plans databases, etc. Likewise, the upcoming research is focused on the study of cases, not societies and samples.

4. Findings from the research of the article:

(Yari, Elias and Shehbazinia, Morteza 2014) in research entitled "(Presentation of a new reason in the appeal stage of civil lawsuits)"

Comparative law in Iran and England has addressed the issue that presenting a new reason at the appeal stage, contrary to the new claim, is conflicting.

With the principle of two-stage proceedings, there is no doubt about its validity. Even though the new rule of knowing the reason in the A.D.M. law is explicit

It has not been clarified, but considering how some articles of the above law are enacted, two different criteria can be established; It is possible to provide a limited concept of a new reason by relying on paragraph C of Article 348 and Articles 96, 219 and 220 and consider it as a reason that was not expressed in the primary proceedings. Based on this, reasons that have not been evaluated by the trial court for any reason, despite being expressed, are not considered new at the appeal stage. According to the second point of view, which the judicial procedure also tends to, all the reasons that have not been evaluated by the primary court for any reason, can be presented in the form of a new reason at the appeal stage.

-Khosravi, Amir, (1389) in his dissertation entitled "Reviewing the role of the court about evidence in Iran's law courts" has stated that evidence plays a central role in the proceedings and accordingly, regarding the role of the legal judge about Evidence has long been the subject of controversy and in Iran, many laws have been enacted in this regard. So even now despite article 199 Also, we still do not have a specific procedure because the scope of this article is disputed.

Hosseininejad, Hosseinqoli, (2004) in a book entitled "Evidence to prove Claims", the collection of evidence to prove claims in legal affairs

has been discussed and investigated, which will be considered as a favorable background in this sense; But this book, between

There is no distinction between the evidence in the preliminary stage and the appeal stage, and the principles governing the system of presenting evidence in the appeal stage, regardless of the reason New and the conditions for presenting the new reason have not been clarified at this stage; Therefore, from this point of view, what is considered in this research

It will be different from the content of books of this kind that deal with the legal evidence system in general

-Mansoorabadi, Abbas, (2004) in research titled "The right to appeal in the fair trial process,"

- 1) It refers to the right of appeal. This comes from the fact that a group of jurists have claimed that in jurisprudence and Sharia
- 2) Islami, the appeal is not recognized. In this article, by examining the opinions and views of different jurists regarding the appeal,
- 3) Its necessity in today's world has been proven and the general principles and rules governing it have been analyzed in an argumentative manner.
- 4) From this point of view, it is obvious that according to the current conditions of our society, the provision of revision in the form that is proposed in other legal systems is not only not against Sharia; Rather, it is in the direction of the general goals of Sharia.
- 5) The research that has been examined regarding the system governing the proofs of the lawsuit has been mainly focused on the types of lawsuit evidence or finally on how to present the proofs in the preliminary stage and the possible conflict of these proofs with each other, but the research that There is no focus on the evidence and the legal system that governs it in the appeal stage, and it is devoted to the difference between the presentation of evidence between the initial stage and the appeal stage, as well as how to present new evidence in the appeal stage; Therefore, because we intend to deal with these issues specifically and independent of the generalities governing the claim proof system, this article will be characterized as innovation

5.The concept of legal evidence:

According to the Civil Procedure Law, several pieces of evidence are considered to prove the claim in the legal courts

Which include:

1-1 Confession: Confession means that a person expresses a matter that is in the interest of another and to his detriment, which in the confession

The other side does not need to prove and provide any other evidence. The confession may be in writing, under the petition

or the bill or documents that are presented to the court will be implemented or it may be oral and in the negotiation in the court

1 to be implemented(1) .

1-2 Document: The document is one of the most important reasons for proving a claim in a legal dispute. The document is a pre-prepared proof.

It is divided into two types official documents and ordinary documents.

In legal cases, both an official document and an ordinary document can prove the claim. According to Article 1287 of the Civil Code

An official document is a document that has been prepared in the registry office or notary offices or other official officials within their jurisdiction, otherwise, it is considered a normal document. In Article 1284 to Article 1305 of the Civil Code, it is stated that official documents, if they are presented as evidence to prove a claim in court, can only be claimed as falsification by the other party, because the principle is based on the authenticity and authenticity of this document.

The documents are official and valid; However, normal documents that are presented as proof of a claim can be claimed forgery and can be denied and doubted.

Therefore, a person who claims to falsify documents (official and normal) must provide evidence for his claim, and it does not matter if he is the plaintiff or the plaintiff, and if someone denies or doubts normal documents, he does not have to prove it. If a document is alleged to be a forgery, it cannot be denied or doubted, and if normal documents are denied or doubted, a forgery claim can be made against that document(2) .

(3-1 Provincial Court of Appeal: (the former name of the Provincial Research Court), are courts in Iran that are established in the centers of the provinces according to the scope of the jurisdiction of each province. This court is formed to deal with the appeal against the appealable decrees issued by the first courts and also to resolve the dispute in the jurisdiction between the courts, the dispute between them is within the jurisdiction of this court, and in terms of rank, it is one level higher than the first court. This court is within a complex that has a president and each of the appeals courts of the province in this complex is called a branch of the appeals court (formerly a branch of the research court of the province). Each branch of the provincial appeals court has two main sections:

A) Court branch

b) Court office

Appealing is a method of protesting against the judgment of the primary court, which can be done within twenty days from the date of issuance of the decision based on the grounds of appeal mentioned in the law, and the reference is the appeals court of that province. The method of appeal can also be done by visiting one of the judicial electronic service offices and filing a petition.

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- 1) 1. Seifi, Gholam Ali and Heydari, Asmat, written confession in legal affairs, Tehran, Jangal Javadane Publishing House, 1389, p. 2
2. Norouzian, Ghorban, proofs of litigation in legal affairs, Tehran, Tirgan Publishing House, 2019, p. 41.

2- History check:

1-2) Historical background of proofs of claims:

In ancient times, many private and commercial disputes and lawsuits were resolved by referring to arbitration. In this period

The most important reasons were the supernatural ones. Non-appearance of the litigant despite prior notice of the trial time and his disregard

Regarding the invitation of the court, it was considered as evidence of his injustice. In this period, they forced the litigant to resort to supernatural evidence or Yazidi tests to prove or disprove the claim. For example, they forced him to walk on fire or hold molten iron in his hands, or molten lead was poured on his naked body, and whenever the accused did not suffer and survived, it was proof that he was right. All nations of the world have gone through this stage of judgment and it was not unique to ancient Iran. (1)

This ritual, which is called Ordali in European languages, is based on the idea that if the accused is innocent, the gods will come to his aid and save him, and the accused will come out of the test white and successful. In the second article of the Charter of Hammurabi, the use of the Everdali or Yazidi test was accepted as judicial evidence. According to this article, if someone accuses a person of witchcraft and cannot prove his claim, the accused can go to the river and immerse himself in the water. If he drowns in the river, the plaintiff will take possession of his house, and if the river proves his innocence and he gets out of the water unharmed, the person who accused him of witchcraft must be killed, and the one who comes out of the river safe can be killed. confiscate the plaintiff's house and property.(2)

1) Rasouli, Seyyed Javad, Mythological Ritual of Var, History of Oath in Iran and the World, Tehran, Soroush Publications, 1377, p. 41

2) Ashuri, Mohammad, Criminal justice from Hammurabi's point of view, Institute of Comparative Law, No. 7, 1359, p. 6.

Regarding the period of legal reasons, it should also be said that in this period, the legislator, with his previous intervention and action, determined and announced the types of proofs and their legal value. This system, which was common in the empire and Europe of the Middle Ages, is said to be

a case in which the judges, in the presence of evidence presented by the legislator, must issue the verdict without any doubt and even in cases contrary to the inference and conviction of their conscience. in this

The period of Qazi Masloub Akhtiyar has been likened to a musical instrument that if played, a song can be heard from it. In this system, the legislator has already determined the value of each of the reasons, and if they are presented, the judge is forced to issue a verdict, even if his belief and certainty are against it. In the words of French jurist René Garou: In this period of confession, she was considered the queen of reasons.

Finally, regarding the course for scientific reasons, it should be said that this course is more complete and reassuring than the previous courses. In this course, the expert enters the criminal justice process as a new authority and using his knowledge, Article 38 of the Constitution of the Islamic Republic of Iran and Article 578 of the Islamic Penal Code provide reliable new guidelines and standards. He eliminates or minimizes the lack of trust, doubts, subjectivism, imagination and uncertain theories in the matter of judgment. However, the judge's knowledge and faith should always be recognized as the final rule in the free evaluation of evidence. However, the judge's personal opinion cannot be a truth control method. The system of scientific reasons is a manifestation of the system of spiritual reasons and does not conflict with it, because in the system of spiritual reasons, the judge is also allowed to use scientific reasons to convince his conscience; Therefore, separating these two systems from each other does not seem reasonable.

3- Appealable votes:

1-3) According to legal rules, the following rulings can be appealed:

A- In financial lawsuits whose demand or value exceeds three million Rials.

B- All judgments issued in non-financial lawsuits.

C - The ruling on the minor aspects of the lawsuit, if the ruling on the main content of the lawsuit is appealable.

Rulings documented by a confession in court or documented by the opinion of one or more experts whose opinions have been decided by the parties in writing cannot be appealed, except for the jurisdiction of the court or the judge issuing the decision.

2-3) Appointments that can be revised:

The following rulings can be appealed if the ruling on the merits of the lawsuit can be appealed:

A- The order to cancel the petition or reject the petition issued by the court.

B- Order to reject the lawsuit or not to hear the lawsuit.

C - The settlement of the lawsuit.

D - Disqualification of one of the litigants.

If the parties to the dispute have waived their right to appeal with a written agreement, their appeal will not be heard except for the jurisdiction of the court or the judge issuing the decision and the appeal of the appealable votes counted in the law will prevent the execution of the decision, even though the issuing court has declared its decision final, except in the cases that are exempted according to the law.

If the judge who issued the decision realizes his mistake, he will send the case to the appeals court with reasons, the said court will violate the issued decision and deal with the substance according to the reason, of course, this issue will not prevent the appeal and the appellant should personally Or file an appeal by your lawyer within the stipulated time. (Hashmi, Seyyed Ali, Comparison of appeals, appeals and retrials in civil procedure, master's thesis, Qom University, 2011, p. 74.)

3-3) Directions and deadline for appeal:

In the following, we will briefly mention the other conditions governing the appeal, including the aspects of the appeal and its deadline.

Appeal directions:

An appeal is based on one of the following reasons:

A - Alleging the invalidity of court documents.

B - Alleging the lack of legal requirements for witness testimony.

C - Alleging that the judge did not pay attention to expressive reasons.

D - Alleging the lack of jurisdiction of the judge or court issuing the decision.

E- Alleging that the vote is against Sharia standards or legal regulations.

In addition, if the request for appeal is based on one of the mentioned aspects, if there are other aspects, the appeal authority will deal with that aspect as well.

4) Petition and proceedings:

The applicant for appeal must submit his petition to the office of the court issuing the decision or the office of the first branch of the court of appeal or to the office of the detention centre where he is detained, and each of the authorities mentioned above must register it immediately after receiving the petition. A receipt containing the name of the applicant and the litigant, the date of submission, the registration number and the petition to the submitter and to write the same date on all the papers of the appeal petition. This date is considered the date of appeal, and if the petition is given to the office of the appeal authority or detention centre, it will act as described above and send the petition to the court issuing the decision.

If the petition for appeal is submitted within the legal deadline, after completing it, the head of the office of the primary court will send the case to the appeal authority within two days. The decision of the court that issued the primary decision is rejected, this decision can be appealed within twenty days from the date of notification to the appeals authority, and the decision of the appeals court is final. The court must determine whether the decision can be appealed or not and the appeal authority under its decision. This will not prevent any of the parties from appealing if the court's decision is appealable and the court declares it final.

5) Proceedings in the Provincial Court of Appeal:

The authority for appeal of the decisions of the general and revolutionary courts of each area is the appeals court of the centre of the same province, and failure to comply with the legal conditions of the petition or failure to remedy its defects within the legally prescribed time in the first stage will not cause the decision to be violated in the appeal stage. In these cases, the Court of Appeals warns the original petitioner to rectify the defect within ten days from the notification date. If no action is taken, and also if the position of the petitioner is not clear, the court will overrule the decision and issue an order dismissing the primary lawsuit.

If the appellate court does not notice any other errors in the original decision other than mistakes such as numbers, figures, typos, details of the parties, or omissions in that part of the request that has been proven, it will approve it while correcting the decision. The appellate authority deals only with what is the subject of appeal and what was decided in the first stage. If the appellate court finds that the primary court lacks local or inherent jurisdiction, it will overturn the decision and send the case to the competent authority. If the incompetence of the judge issuing the decision is claimed, the appeals authority will first deal with the main claim and, if confirmed, the decision will be overturned and re-considered. If the court of appeal finds the complaint to be by the legal standards, it will be approved; Otherwise, after the violation, the case will be returned to the issuing court for substantive consideration. The order of investigation and examination of place in the court of appeals is executed by the head of the court or by his order by one of the advisors of the branch, and if the place of execution of the order is in another city of the same province, the court of appeals can request the execution of the order from the local court, and if the place of execution of the order is in the jurisdiction of another province, by granting judicial representation to the local court, he will request the implementation of the order, and in cases where the basis of the court's decision is only a witness certificate or a local examination, it will be done by the judge issuing the decision, unless the report is trusted by the court.

If the appellate court does not justify the decision of the primary court regarding the rejection or non-hearing of the lawsuit for the reasons mentioned in the decision but finds the lawsuit rejected or unhearable for other legal reasons, it will finally confirm the issued decision. The regulations that are observed in the primary proceedings are also valid in the appeal stage; Unless otherwise stipulated by law. Other than the litigants or their legal representatives, no one else can enter the appeal stage, except in the cases stipulated by the law. If the appellate court considers the appellant's claim to be justified, it will overrule the trial court's decision and issue an appropriate decision. Otherwise, by rejecting the request and confirming the decision, he will return the case to the primary court. The judgment of the appeals court cannot be used by non-appeal parties, except in cases where the issued judgment cannot be divided and separated, in which case it will be extended to other persons who were subject to the original judgment and did not appeal. Whenever there is a mistake or mistake in the preparation and writing of the decision of the appeals court, the same court will correct it by observing the conditions of corrective votes, and the document will be prepared and served in the order prescribed in the initial stage. (Rezaei, Jafar, comparative study of appeals in the Law of Organization and Procedure of the Court of Administrative Justice and the Law of Procedure of General and Revolutionary Courts in Civil Affairs, Master's Thesis, Tabriz University, 2014, p. 53.)

1-5) The new claim will not be heard at the appeal stage, but the following cases are not considered new claims:

- 1- The demand for the price of the judgment, which was the subject of the preliminary decision, or the demand for the same money, the price of which was decided in the preliminary stage.
- 2- The claim of rent and the demand for the rest of its instalments and the payment of the debt, the due date of which has been paid during the preliminary proceedings, and other ancillary claims such as damages that have accrued to the main demand during the course of the lawsuit or after the issuance of the preliminary ruling. The subject of the judgment has not been fulfilled or the deadline for its payment has arrived after the issuance of the judgment.
- 3- Changing the title of the request from the al-Masmi wage to the al-Mathlem wage or vice versa. If any of the parties to the dispute return their appeal petition, the appeal authority will issue an order to cancel the appeal petition. The votes issued in the appeal stage are final, except in the cases that can be appealed.

The point is to mention that appeals and objections to absentee decisions are issued by the provincial appeals court in cases where the judgment of the appeals court is for the conviction of the defendant and the defendant or his lawyer was not present in any of the proceedings and did not file a defence bill or objections. If the decision of the court of appeals can be contested and heard in the same court of appeals within twenty days after the actual notification to the defendant or his lawyer, the decision issued is final. Arshadan Publishing House, 1400, p. 11.

Explanation of presenting a new reason at the appeal stage:

Regarding the acceptance of the reason, there is not much difference in the appeal stage compared to the primary stage. Before the enactment of the Civil Procedure Law approved in 1379, both in opinion and in practice (judicial procedure), it was accepted to present a reason in the appeal stage. In the research stage, a new reason can be presented, the meaning of a new reason is a reason that has never been It has not been cited in the preliminary stage (Jaafari Langroudi, Mohammad Jaafar, previous source, p. 100)

The Supreme Court of the country has also mentioned this in various opinions: "There is no prohibition to express a new reason in the research proceedings..." Decision No. 554 of the First Branch and Decision No. 1047-2/6/29 of the Fourth Branch of the Supreme Court of the Country. In the current judicial procedure, they often believe in the acceptance of the reason, and the most important document for the acceptance of the new reason in the appeal stage is Article 199 of the Supreme Court (Judicial Session, 2006). Of course, some cite Article 348 of the Supreme Court Believing that this article is exclusive, they believe in not accepting the reason at the appeal stage. (Kiriimi, Abbas, evidence to prove the case, Tehran, Mizan publishing house, 2008, p. 47)

Such an opinion leads to the conclusion that if the first court examines a matter, then the appellant requests by presenting a new reason to violate the decision and the court of appeal, based on the reason provided, finds that the decision issued is against the law, only because Considering the novelty of the reason, he must confirm the decision against the law.

The appeals court must deal with the case, it should try to discover the truth with the broad powers in Article 199 of the ADM, not to ignore the truth. On the other hand, it seems that the limited view of this is not without problems; Because paragraph "e" of this article stipulates: "Claim of opposition of the vote against Sharia standards or the provisions of the law" is so broad that it includes any vote that is against the law in any way; Perhaps this is the reason why the judicial procedure is not involved in these cases, but only appeals are processed by the appeals court without mentioning the direction. Also, the contrary concept of Article 362 of the A.D.M., which says that the new claim will not be heard at the appeal stage. It is the text of Article 509 of the A.D.M. Law (approved in 1318), which stated: "Expressing a new reason is not a new claim". As a result, presenting a new reason at the appeal stage is admissible and not accepting it is not allowed.

As a general rule, in Iranian law, it is permissible to express new reasons at the appeal stage. The impossibility of hearing a new claim in the appeal stage has its root in the principle of substantive proceedings in two levels, which makes the consideration of the nature of each claim in the higher stage dependent on its previous consideration in the first court, and considering that this limitation in The case of evidence has not been established, it should be considered possible to propose new evidence elements at this stage. (Mohsani, Hassan, Administration of civil proceedings based on cooperation and within the framework of procedural principles, Tehran, Publishing Company, 1389, p. 163.)

In general, the appeals court can consider some important evidences, these evidences are:

- Detailed and comprehensive description of the incident and related events.
- Contractual text or legal principles that have been violated.
- Material evidence and documents presented in the primary court.
- Eyewitness statements and testimony of witnesses or experts present in court.
- Laws and regulations related to the subject in question.
- Examination of the scene, if necessary.
- Examining the analysis of the legal rule and its interpretation in the opinion of the Court of Appeal.
- The correctness of the proceedings and the decision of the primary court.
- Re-evaluating the information related to the specific case and carefully examining the issues that were overlooked in the primary court.

The matters mentioned above will be done concerning previous related or similar judicial decisions and previous judicial decisions, if any.

Conclusion:

Conclusion In general, in the domestic legal system and laws, there are requirements for providing evidence in the courts. This mechanism and the requirements considered for the presentation of evidence by the parties and their review by the legal judge exist both in the initial stage and in the appeal stage, which ultimately leads to the issuance of judicial opinions that, through the presentation of proof evidence, to the truth and Justice will be closer. As stated, these legal requirements for providing proof evidence exist in all stages of the legal proceedings process, but what was raised as the main issue and concern in this research is the issue of legal requirements governing the presentation of proof evidence in the appeal stage. Is. Considering that from the point of view of the ruling system of legal proceedings in the country, the subject of appeals from the first court decisions is a popular issue in the society and many people, including lawyers and lawyers on the one hand and ordinary citizens on the other hand, appeal and present evidence in this matter. are involved in the stage, therefore it is important and necessary to deal with the different conditions governing the proof of claim in the appeal stage and the difference between the system governing the presentation of evidence and the primary stage, as well as the requirements governing the presentation of new evidence in the appeal stage, and the principles of dealing with this issue And solving the ambiguities and challenges that govern it solves many of the concerns of lawyers and citizens in referring to appeals from preliminary decisions, so it will be important to address this issue in the form of an academic and scientific research. The findings and results of the research confirm that the legal laws, including the civil procedure law, have explained a special order for presenting reasons at the appeal stage, including that two conditions must be met in presenting the new 102 reasons at the appeal stage. First, the lack of evidence in the initial stage, and second, the lack of evaluation of the reason in the initial stage, in addition to the text of the laws above, certain legal principles governing lawsuits and dispute resolution in the appeal stage have also devised measures, including that in the presentation of evidence in the appeal stage Requirements such as the principle of effectiveness, the principle of relevancy, the principle of citation and the principle of the power of proving the reason must be met. Regarding the questions and hypotheses raised and their proof and rejection, it should also be said that the basic question of this research was which legal requirements govern the presentation of evidence in the appeal stage, and in this regard, we assumed that according to the civil procedure law Presenting the reason in the appeal stage is subject to special conditions, which in the text of the research also explained the special conditions in the appeal stage in the second chapter, and its legal requirements were also stated, which will finally prove this hypothesis. Also, in the research plan, the question was raised, what are the differences and commonalities between the requirements governing the presentation of evidence in the appeal

stage and the legal requirements of the primary stage, in the answer, we assumed that the presentation of evidence in the primary stage is the same as in the stage. The anticipated revision is different, although there are commonalities in basic principles such as examples of evidence and its handling by the judicial authority. This issue can also be proven with the legal principles and conditions and the general principles related to legal appeals that were explained in the third chapter. In another question, we had raised which legal requirements the presentation of new evidence in the appeal stage follows, and in this regard, we had assumed that according to some provisions of the A.D.M. Law. Among them, Article 348, Article 103, Articles 217, 219, 220, and Article 426, Article 7, the legislator, by adopting a strict position, considers the new reason to be exclusive to reasons that were not mentioned or expressed at the initial stage. This hypothesis can also be proved according to the content of the second chapter regarding the presentation of a new reason at the appeal stage.

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