

Foundations for Drafting an Appeal Petition in Jordanian Courts

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Abstract

This article examines the stylistic elements of the judicial petition of appeal in the Jordanian courts. It focuses on the specific language and phrases employed in appeals made by certain attorneys to the Court of Cassation and the Court of Appeal. Several of these appeals had unsuitable language and expressions that diminished the prestige and respect of the court, therefore violating the relevant regulations and ethical standards in addressing the judicial body. The study stated that attorneys should refrain from using harsh terms and phrases, based on concrete examples provided. It emphasized the need for lawyers to enhance their discourse style to uphold the reputation of the judiciary and show respect for its rulings. If necessary, the court can impose a sentence on the lawyer. Furthermore, the study emphasizes that the lawyer must exercise caution in selecting their words and phrases, refraining from engaging in defamation or slander. This is crucial for maintaining the dignity of the legal system and its authorities.

Keywords: Drafting, Procedure law, Jordanian law, Judicial petition, Appeal.

Introduction

Although the judiciary is primarily a social institution, it appears in both linguistic and non-linguistic ways. Rather, it depends, par excellence, on language. Whether in legislation, issuing judgments, or studying and discussing cases. The legal system puts society's beliefs and values into practice in various areas of life. The language of the law is therefore of real importance, especially for people interested in tackling language problems in the real world (Mazhood, 2021). The legal language varies according to the difference in the role played by each party of the jurists, and this explains why the language of these jurists differs in their vocabulary and methods. Therefore, there is a discrepancy between the language of legislators, judges, and administrators, as well as lawyers (Mattila, 2006).

Lawyers are legal professionals who specialize in providing judicial and legal help to clients in exchange for a fee. Under Article 54 of the Jordanian Bar Association Law, a lawyer is obligated to abide by the ethical standards and

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customs of their profession. This includes conducting themselves with honour, integrity, and honesty, as well as fulfilling all the responsibilities outlined in this law and the regulations and traditions of the association, as stated in Article 56. According to the Jordanian Bar Association Law, lawyers are required to conduct themselves in a manner that upholds the honour and respect of the legal profession. They must refrain from any actions or statements that hinder the progress of justice.

While presenting arguments to his clients in different court situations, the lawyer is determined to secure a favourable outcome as he strongly believes in upholding justice that benefits his client. Hence, the lawyer endeavours to select a style or approach that exerts a potent and persuasive influence on the judiciary, employing suitable and courteous language together with nimble phrases that steer clear of defaming, upsetting, or demeaning the judge or the court. Every situation requires careful consideration of the words used (Meqdad, 2019), especially when challenging court decisions.

The status of the discourse demands justice and the rectification of injustices. Therefore, it is unacceptable to undermine the prestige of this position by using inappropriate language or expressions when filing appeals against court rulings. Before constructing their speech, it is imperative for a lawyer to first identify and consider the kind or nature of the intended recipient. The recipient of this message is seen as part of an exclusive group that should not be addressed in the same way as the public, owing to their higher cultural status and privileged position within the court (Al-Moudin, 2014). It has been said that language is to lawyers what the piano is to a pianist: the instrument of his profession. Some may use them better than others, but no one can run their business without them (Marmor, 2014).

Upon reviewing a multitude of appeals submitted by some legal practitioners to the judges, it became evident that derogatory or unsuitable language was employed towards the judge or the court. As a result, the judiciary was compelled to address these rhetorical tactics that breach the ethical standards of attorneys and deviate significantly from the principles of litigation. Consequently, the judiciary has made stringent rulings, occasionally targeting lawyers who engage in such misconduct.

This research is dedicated to diagnosing the nature of the approach utilized in judicial discourse and emphasizing the need for attorneys to use more sensitive and courteous rhetorical methods while addressing the court. This study explores the influence of rhetorical styles in court proceedings, specifically focusing on identifying and analysing stylistic flaws. It highlights the potential for

these flaws to compromise the judge's impartiality or undermine the court's reputation. The researchers may propose linguistic alternatives to replace these undesirable words, which have the potential to provoke the judiciary or disrespect a specific judge.

Research Methodology

The work utilised a descriptive-analytical approach to accomplish the study aims. This article analyses the strategies utilised by specific attorneys and the language selections they make that are considered improper based on societal ethics and established legal norms. Subsequently, it performs an exhaustive semantic linguistic analysis of these words, to ascertain their influence on the receiver. These remarks have frequently been found to result in delays or even the dismissal of the lawsuit. Moreover, attorneys who employ such terminology in their appeals may encounter disciplinary action. The study utilised appeals petitions obtained from the courts as illustrative instances, encompassing a range of rhetorical methods. Dependence on relevant sources is essential for obtaining meaningful results and recommendations.

The Language of Judicial Discourse

Language serves as the medium via which thoughts and emotions are conveyed, and it has the power to influence and alter human beliefs and assessments (Miqdad, Abu Issa, & Alwerikat, 2022). When composing a legal or judicial document, the author must meticulously select their words to align with the established conventions and traditions of the judiciary, regardless of whether they are a lawmaker, judge, or lawyer. When it comes to legal language, it is crucial to adhere to a specific linguistic approach that allows lawyers to effectively draft their written and oral arguments (Alhendi & Bani, 2022). Unfortunately, many lawyers tend to overlook this aspect and become overwhelmed by linguistic complexities, resulting in a lack of understanding of linguistic and stylistic principles when preparing their arguments.

Consequently, a significant number of individuals find themselves in legal predicaments that result in them being held accountable by higher judicial authorities. The majority of stylistic errors committed by attorneys include the misuse of language that is improper given the context of the court proceedings, undermining the authority of the judiciary. Hence, it is evident that there is a prevalence of slanderous or defamatory expressions, as well as expressions indicating bias and severe criticism towards the court and its decisions.

However, it is important to remember that the lawyer's language should involve a thorough examination of words that convey the meaning of the petition

(Alawi, 2021), while also referencing the relevant laws and legal regulations without defaming or accusing the court of any weaknesses, negligence, or incapability. In response to an unfavourable decision, it is expected that the lawyer, when drafting their appeals petition, refrains from using phrases and expressions that impose their opinion on the court panel or attempt to compel it to make a decision that aligns with the lawyer's preferences.

Simultaneously, the lawyer should refrain from employing language and expressions that convey subservience and vulnerability towards the court panel in an attempt to establish rapport and gain its compassion, since this diminishes the court's status and respect. Consequently, it is inadvisable for a lawyer to overly concern themselves with the judge or to excessively show them respect and deference through the use of language that indicates such interest (Article 2, Regulations of the Legal Profession and Code of Conduct for Lawyers, Jordan, 1979).

It is important to remember that the petitioner is making a plea. The language he uses should be characterised by a profound sense of respect for the panel in front of which he presents his case. While he may possess superior knowledge compared to his audience, his words should serve as guidance for them. However, his manner of speaking should convey reverence and dignity, without the need for excessive deference or humility in addressing the conversation. The expressions of grovelling and flattery words addressed by certain attorneys towards a judge, who does not require a rank to be taken away from him as a form of excessive discipline, are highly detested. Removing the rank might be seen as flattery and favouritism (Al-Sharif, 2003).

The Legal Rules Governing the Drafting of a Judicial Appeal

The procedural laws pertain to certain regulations that must be adhered to while drafting a court appeal. In summary, these rules can be summarized as follows:

a. Addressing the Appeal Against the Judgement

As per this regulation, the attorney is required to restrict the reasons for the appeal to the flaws explicitly stated in the ruling during drafting. As previously said, appealing the ruling entails challenging the decision through a legal process. Therefore, it is prohibited to address the appeal directly to the presiding judge or the panel responsible for rendering the verdict. An often-observed error in the formulation of appeal regulations is the inclusion of the phrase "The court erred...". This rule is derived from the texts governing appeal procedures, such as the Code of Civil Procedures or the Code of Criminal Procedure, which indicate that appeals are only made against judgments.

b. Writing the Reasons for the Clear Appeal, Free of Controversy, and in Separate Numbered Items

According to Article 181/4 of the Code of Civil Procedure, the appeal statement must contain all the reasons for the appeal, presented in a concise and non-controversial manner, with each reason numbered separately. Similarly, Article 193/5 states that the cassation statement must include clear and non-controversial reasons for the cassation appeal, also presented in separate numbered clauses. Additionally, the appellant must indicate their requests, and they have the option to attach an explanatory memorandum to the cassation statement, explaining the reasons for the appeal.

Following the nature of the case and the Code of Civil Procedure, which supplements any deficiency in other procedural laws with its provisions, the Court of Cassation determined that the rationales for criminal appeals ought to be expressed in a manner that is unambiguous, devoid of contentiousness, and contained in distinct clauses (Criminal Cassation 1366/2003; Criminal Cassation 1109/2015).

One of the lawyers mentioned in his appeal that the decision being appealed contradicts the provisions of Articles 266 and 267 of the Civil Code, which pertain to the determination of the nature of the damage as a key aspect of civil liability. However, the Court of Cassation determined that this argument was too general and did not provide specific evidence of how the decision violated the mentioned articles. Therefore, the court dismissed this argument and considered it invalid. (Civil Cassation 729/2004).

Furthermore, under this regulation, it is impermissible to include the following in the appeal statement: (assert that the appellant has reiterated every one of his prior statements) or (reiterate every one of his prior pleadings and requests). Under the ruling of the Court of Cassation, it is presumed that a valid reason for appeal cannot be found in the repetition of reasons for statements, pleadings, and requests. This conclusion is based on the principle outlined in Article 193.5 of the Code of Civil Procedure, which mandates that an informed individual provide the reasons for appealing a cassation in a clear and controversy-free manner, using distinctly numbered clauses that must be cited (Civil Cassation 2090/2021).

It must be noted, nevertheless, that the legislator did not specify a sanction for contravening this regulation. As a result, the reasons for the appeal may be written in separately numbered clauses and without restriction to be clear, controversy-free, and without causing the appeal petition to be rejected or deemed illegitimate.

Judicial appeal Stylistics in Jordanian courts

Language skills, study skills, argument skills, and the skills associated with dispute resolution are vital to every professional lawyer (Hanson, Kliem, & Waters, 2021). However, it was noted that some lawyers have engaged in misconduct while submitting their appeal petitions to certain Jordanian judicial bodies. They have used inappropriate language and phrases that violate the established rules of etiquette and ethics within the judiciary.

By examining a sample of these instances of misconduct, we can observe a variety of patterns in the appeals made against court judgments. Regardless of the appellant's status, objectives, or psychological state that may have influenced their use of such language, it is important to note that this behaviour does not excuse them from tarnishing the positive reputation that the judicial discourse should uphold.

To provide further elucidation of the situation, we give a collection of decisions rendered by several courts, articulating their perspective on the arguments presented by the lawyer in his appeals petition.

a. Using the Transcendence Language and Ordering the Court

From that: "The appellant has exceeded the limits set by the law to challenge the judgments by saying (it was obligatory for the Court of Appeal and before it the First instance Court) such an expression is unacceptable and it is not permissible to address the courts and the judiciary in this way, because it undermines its prestige and dignity, as the appellant must identify the legal violations and errors contained in the appealed judgment without prejudicing the prestige of the court" (Civil Cassation 5418/2021).

Based on the appellant's previous appeal petition, it is evident that the language used conveys a sense of transcendence and superiority towards the court. The appellant seems to be dictating and imposing their desired decision on the court panel, as indicated by the phrase "it was obligatory for the Court of Appeal..." Implies that the court is incapable of applying the law and making reasonable decisions, which is a clear violation and departure from the expected public moral standards of respecting the judiciary. This appears to be a kind of attempt to dominate the judiciary (Chaemsaitong & Simuang, 2023).

b. Accusing the court of error and lack of understanding

Upon analysing another decision, we observe a pattern in the formulation of appeals that arises from the use of unsuitable terminology and descriptions, wherein the court panel is alleged to have committed errors and serious blunders.

According to the Court of Cassation's decision, the attorneys' cassation statement included unnecessary phrases and descriptions that were not essential

for the defence. These included references to specific court judgments and requests for an expanded public panel. Additionally, the attorneys concluded their petition by stating that both the Court of Appeal and most of the Court of Cassation panel had made a serious error in applying the law (Civil Cassation 453/1998).

The observation is also evident in the verdict of the Amman Court of Appeal 13018/2021. The appeal petition contained a phrase (the court erred in understanding the subject matter of the case and based its decision on this misunderstanding) that was used by the appellant's attorney. However, this statement goes beyond the acceptable boundaries of the defence and the proper manner of addressing the court. It is not appropriate to use such expressions when addressing any court, regardless of its level. If the attorney can support their argument with the first instance court's judgment, they should not label it as a "misunderstanding of the subject matter of the case." Hence, our court asserts that while addressing the courts, it is important to use respectful language, even if they have made legal mistakes in their rulings (Amman Court of Appeal 13018/2021).

Previous decisions of the Courts of Cassation and the Courts of Appeal included mentioning the lawyer's use of phrases in which he accuses the court of making a mistake in applying the law, as the lawyer describes this mistake as an obscene mistake once and a grave mistake the next time without a shadow of a doubt, and with a faulty understanding of the case subject matter. These descriptions violate the principles of respect and courtesy within the court. They specifically criticise the court of cassation panel for allegedly misapplying the law to most of its members, disregarding their opinions, and accusing them of significant mistakes.

The decision also incorporated the lawyer's statement within the same petition, which mandates the court to render a verdict from an enlarged panel of judges. This rhetorical approach is itself deemed an audacious intervention in the court's proceedings, and further exposes a sense of superiority and haughtiness towards the judicial authority.

c. Using Words and Expressions Accusing the Court of Injustice, Lack of Justice Observance, and Arbitrariness

According to the Court of Cassation's Judgement, it is noted that the attorney deviated significantly from the ethical standards and conduct expected of lawyers by making the statement, "The Court of Appeal did not seek justice." (Civil Cassation 1075/2002).

This also includes what was stated in Judgment issued by the Amman Court of Appeal, by saying: "We do not fail to point out as what was stated in the appellant's lawyer mentioned in the introduction to his appeal petition, of the

phrase („The appealed decision is contrary to the spirit of justice..) deviates from the limits and requirements of the defense in this case, it is not commensurate with the requirements and principles of decency and professional ethics that the lawyer must observe in addressing the courts, and he must commit to presenting his defense in a manner consistent with the need for respect for courts, and that such a description should not be directed to any court, regardless of its degree, because even if it is the representative attorney has the right to express his opinion regarding the court’s judgement during the challenge against it with the legal aspects of appeal, so he does not have the right to describe the court’s decision as violating the spirit of justice (Amman Court of Appeal 9057/2021).

d. Accusing the Court of Error, Neglect, and Failure to Assume Responsibility, and a Legal Defect or Lack in Law Enforcement

This appears in what was included in Judgment of Civil Cassation Court: "In the second and third grounds of his request, the summoned attorney stated the following phrases: (The Court of Cassation made a mistake by rejecting the cassation petition submitted by the summoned in the correct format, without applying the provisions of the law and without bothering to respond under the principles and the law, which has resulted in a lack and a legal fragility in the application of the principles and the law). Our court, in its overall composition, has determined that the statements made by the attorney summoned in this case do not conform to the limits and expectations of the defence strategy. It is necessary to address the Supreme Court using appropriate language that is not suitable for any other court, regardless of its jurisdiction. Although the lawyer is entitled to voice his view on the judgment of the Court of Cassation, he is not permitted to characterise the Court of Cassation as disregarding the rules and the law by rejecting the cassation without responding under the prescribed procedures" (Civil Cassation 2843/2009).

This encompasses the content mentioned in the ruling issued by the Court of Civil Cassation, which highlights the phrase "...which was disregarded by the Court of Appeal..." The attorney representing the distinction explicitly noted this phrase in the attached document accompanying their appeal petition. The phrase in question contains an allegation of misconduct and criticism of the Court of Appeal that exceeds the ethical and traditional norms of the legal profession when engaging with the courts and contesting their judgments (Civil Cassation 330/1999).

The use of the phrase (without bothering to respond) against the court is an explicit accusation of neglect and ignorance in following up on the course of appeals, underestimating the efforts of the court, and considering it incapable of

assuming its legal responsibilities in the best possible way, as if there were prior enmity between the court and the lawyer.

e. Employing language and expressions that allege the court exceeded or superseded its authority.

An example of this is what was stated in the judgement of Amman Court of Appeal, the Amman Court of Appeal, saying: "First of all we should not miss to indicate that what the representative of the appellants mentioned in the appeals petition the phrase (with respect, the esteemed court did not observe that it has surpassed its powers by considering itself an opponent in the case when I tended to amend the conditioning of the case...) which goes beyond the limits and requirements of the defence in this case and is not commensurate with the requirements and principles of decency and professional ethics that the lawyer must observe in addressing the courts, and he must be committed to presenting his defence in a manner consistent with the need for respect toward the courts, and for that, such description should not be directed to any court, whatever its level, because even if the representative has the right to express his opinion on what the court ruled during the appeal against him regarding the legal aspects of appeal, he does not have the right in this way to describe the court as opposing or transgressive, especially since the issue of court adaptation to the case is merely a matter of court's jurisdiction" (Amman Court of Appeal 7519/2021).

f. Employment of Terminology and Expressions Alleging the Court's Negligence

In the Judgement issued by the Amman Court of First Instance in its appellate capacity, it is stated that the appellant's attorney's description of the court of first instance as "it missed keeping the memorandum" is not permissible or acceptable. The phrase used by the appellant's attorney is considered inappropriate and does not meet the standards of the defence or the legal requirements for addressing the courts respectfully and appreciatively (Amman Court of First Instance 6705/2019).

g. Employment of Sarcastic or Mocking Expressions Directed at the Court

In its Decision No. 554/2016, the Court of Cassation established an important principle, it implies that addressing the courts should be with words and expressions that involve tact and politeness without offense or ignorance because the method of addressing should be limited to legal scientific facts with impartiality and not in mocking terms that are far from these facts (Civil Cassation 554/2016).

Examples of mocking expressions are what the Court of Cassation stated in its Decision No. 844 of 2014, saying: “As for the fifth reason involved, the court erred in terms of the evidence weight by saying that it is not permissible for a party (defendant) to present an evidence, then the court weighs it in the absence of the defendant’s evidence, and that the evidence weight is the measurement of something by something. Thus, is it permissible to use a one-handed scale other than the electronic scale? This is a deviation from the etiquette/decency of addressing the court and from the legal context in dealing with the judiciary.

Conclusion

The study determined that there are terms that the lawyer may use in the judicial appeal that go against the ethics of litigation, contradict the traditions of the legal profession, and undermine the court's respect. About the court's jurisdiction over these statements, we observe that Article 75 of the Code of Civil Procedure grants the court the power to remove any inappropriate expressions. This article explicitly states that the court has the authority to order the deletion of offensive or morally objectionable expressions from any legal documents or written submissions, even if such action is not requested by any party involved.

The lawyer may face disciplinary consequences for breaching the provisions outlined in Articles 54 and 56 of the Bar Association Law, as well as violating Article 44 of the Bar Association bylaws. This article stipulates that lawyers must consistently uphold principles of honour and integrity, and fulfill their obligations as dictated by the principles and traditions of the legal profession and the decisions of the Bar Council. In addition, the lawyer is obligated by the Code of Ethics and Code of Conduct to demonstrate respect for the courts. This obligation extends beyond just the judge as an individual but also encompasses the judge's position and the maintenance of their reputation and dignity. In addition, it is important to note that certain expressions used by the lawyer may result in legal consequences, specifically if they are considered defamatory. According to Article 191 of the Penal Code, defamation can lead to imprisonment ranging from three months to two years. This applies when the defamation is directed towards the National Assembly or one of its members during their official duties, or towards any official institutions, courts, public administrations, the military, or any employee while carrying out their job responsibilities.

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