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The role of judges in prolongation of legal procedure

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ABSTRACT

The purpose of having laws is to have law and order in the society. According to the principles of the constitution (principle 156), judicial power is the official source for legal investigation and issuance of verdicts about cruel acts, aggressions, complaints and resolving disputes. However, is it possible to materialize the top-mentioned objective? Merely, carrying out the law and issuing verdicts by judges without paying attention to the details around it? When it comes to justice speed is as important as supervision and quality in materializing the objective in mind. In fact, sometimes, unusual delay in resolving disputes and issuing verdicts results in the verdict becoming worthless and bring members of the society The problem of resolving conflicts becoming lengthy in the judicial courts and almost all over the world is common and it is one of the serious legal discussions in our country. Lengthy legal procedure is not something new, in the past also, politicians have confronted it seriously and it requires expertise analysis. In this articles, there has been an attempt to analyze the elements causing the delay including the way judges operate by understanding the concept of prolong of legal procedure.

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INTRODUCTION

Managing the reduction of time in legal procedure is not only a priority of the courts; it is, actually, now the most important aspect of proving the new management's efficiency in the organization of legal procedure.

Speed in recognition of conflict resolution is one of the pillars of fair justice. It is obvious that although is suing the conviction verdict is for the purpose of materializing justice, but the prolongation of legal procedure is some kind of injustice.

The phenomenon of prolongation in legal procedure exists in both civil and criminal disputes and because of the common denominators of these two types of disputes in some legal procedure and general standards, the reasons for delay or prolongation in both types are alike .

In an ideal legal procedure, speed is as important as precision and quality in the legal procedure, speed is as important as precision and quality in the execution of justice what we mean by speed is that we should as much as possible, take a quick step in providing justice without harming the individual's basic rights such as the principle of innocence, his / her right of defense and judicial order. Prolongation of hearing is not only because of a few reasons; it is a group of small and big factors that create this problem. Pinpointing one variable and emphasizing on it cannot solve the problem of prolongation and infect, it will create more problems and challenge the whole system, variables such as problems related to legislature, official organization, the judge and the parties involved in the dispute, in this article, we will briefly analyze the issues first Debate: Reasons of Hearing Prolongation.

First, we will discuss the meaning of hearing prolongation and then the factors creating it.

First paragraph: Definition of hearing prolongation means the act of making something last longer. Hearing means trial, jurisdiction and the action of the judge. In legal terms, also, based on Dr. Langaroodi's definition, hearing is a branch of jurisprudence whose goal is to determine the rules and regulations related to all types of disputes and execution of decisions in the courts. In a nutshell, it is a collection of activities for the purpose of finding a legal solution.

Based on this, we can say that: "prolongation of hearing means unreasonable prolongation of a court hearing starting from the beginning to the end when the final verdict is issued."

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Of course, before clarification of hearing prolongation, more than anything else, it is important to differentiate between the terms of prolongation and delay. We should admit that when it comes to logical analysis of the two terms, we can consider the absolute general and specific relation between them. Based on this logical connection, any prolongation, delay in hearing generally happens because of hearing. This term refers to phenomena that usually, unexpectedly, in connection with hearing and during its course, might come up and often.

Times the final verdict in the dispute is related to how they are decided.

Second paragraph: problems as a result of how the law is made A) Lack of paying precise attention to the skills of making laws lack of using informative sentences, lack of using legal language. And principles when it comes to writing to writing the law, confusion and shortcomings in the law, Silence and vacuum in the law as such that the conciseness in the laws prevent the judge from recognition of the proofs and not to be able to make a proper decision for or about the case front of him.

Also, despite the fact that in principle 167 of the constitution and also article 3 of CLPL the legislator (law maker) has made the task of the judge, in a case that there is not a specific law for it in front of him, and he had to refer to religious sources, the problem becomes bigger when not only there is not a clear law for that case, there is not a religious order for it either, Needles to mention that interpretation of religious general rules are not unanimous in matters and there disagreements among religious authorities too, In many cases, the judge, needs to consult with other judges of get clarification from the judicial branch. The lack of making a timely and merit decision is one of factors for delay and prolongation in hearings.

b) Number of legislating authorities:

Despite the fact that according to the law it is only the legislation branch that has the right to make laws, sometimes some authorities are given legal authority. One of the most serious problems in the current legislative system is the existence of multiple legislative authorities such as the Recognition of the Regime's Expediency Committee, Revolution's Supreme Council the Supreme Court and the Administrative Supreme Council which result in the creation of laws contradicting one another.

The high number of legal texts has reached the point that the principle of "Not knowing the law does not prevent being responsible" will go under scrutiny. As a result, today even the followers of law get confused, *let alone* the ordinary people.

Problems as a Result of Laws:

1- Elimination of previous useful and effective rules in the current Civil and criminal laws: in this case, we can refer to article 79 of civil legal procedure law (CLPL). The silence of article 79 of current LPL, compared with article 108 of the previous law (if change of address is not informed. The (court) papers, based on article 70, be attached on the door.

In this case the addressee, based on article 83, will be able to claim that he was not aware of the contents of the notice. Based on the way this above – mentioned article was worded, the court can claim, based on reasonable evidence, that the addressee has received the notice.

Therefore, the said article clears the way for possible abuse of notification rules in order to delay achievement of justice. The same rule is true banning the hearing (article 105 of CLPL and article 291 of CLPL) because compared to the previous law if hearing reached the delivery of the verdict, the court would proceed with issuing the verdict. Unfortunately in compiling the current law, the useful issue is deleted.

2- The laws related to the breach of the verdict at the appealing stage are because of the local jurisdiction and also the current rules about listening to the witnesses and summoning them, and the lack of proper mechanism for sending legal deputy and the lack of guidelines and these will waste time and reduces the judge's motives to play the role of a deputy judge.

Third paragraph: as a result of judicial structure:

a) Lack of Development in Qualitative and Quantitative Facilities: we can refer to the lack of building standards and or proper physical space, lack of enough building for judicial services, deficiency of office equipment and the lack of using suitable technology.

b) Lack of Qualified Bailiff: Court bailiffs should be introduced by the law. Their actions should be within the framework of the law and under the judicial the judicial control. Lack of organizational internal supervision over the performance of the police force in connection with the lack of performing the orders and the lack of moral commitment of police officers for summoning

The defendants on time which is as a result of suspending the guarantee for criminal administration for refusing to. Carry out the judicial authority's order can be named as some of the reasons for bailiffs' being unqualified.

c) Problems as a result of the lack of Manpower: judges and official and judicial clerks play fundamental roles in finding the power to reach their goals. The lack of manpower in the summoning department, inefficient

qualified manpower in the guidance and counseling departments and judicial cooperation, the lack of enough manpower to continuously control the performance of judges and hearing process are some of the effective reasons in hearing prolongation. The fewer the number of judges compared to the number of plaintiffs, the longer, the hearing duration will be.

d) The Lack of continuous Supervision and inspection; the lack of clear guidelines and enough manpower for supervision and inspection, lack of paying attention to the role and the importance of supervision and inspection by the weakness in the structure of supervision and continuous inspection over the hearing process and the performance of judges are additional reasons for hearing prolongation.

Fourth paragraph: problems as a result of the public's performance

a) The Role of Parties in the Dispute: The lack of cooperation in doing the proper summoning by the parties of the dispute, making wrong claims and giving the wrong address to the court, making the disputes complicated and the lack of hiring an attorney are some of the reasons for prolonging hearings.

b) The Role of Attorneys and legal counselors: some of the examples of this shortcoming are the lack of proper location of disputing parties despite having addresses, fake doctors' notes to use as an excuse not to attend the hearing sessions, not presenting a letter asking for renewal of session missed, hostile resignation (article 39 of CLPL) and or keeping silent in response to the judge's mistakes in the court (for example the lack of essential Competency of the lower court that results in the wrong verdict in the appeal court) and generally resorting to other legal tricks in order to make the other party tired or quit from pursuing his / her claim.

Second Discussion: the Role of the Court's Office Clerk, in Prolonging Hearings.

Generally Speaking, there are three groups in the judicial system we are faced with; judges, judicial managers and office personal (non – judicial staff). In this part of the discussion, we will first analyze how effective the first and second groups in facilitating or prolonging the hearings are and then. We will analyze the role of these judges in this process.

First paragraph: The Role of judicial managers and Office Personnel (non- judicial):

Judicial managers including the managers of judicial branch offices, managers of branches in charge of executing the verdicts, managers of judicial cooperation units, the general office and also the secretary of office and bookkeepers as office staff can each be responsible for prolongation of hearing process.

Unfortunately, most managers and office staff at the courts of law are not knowledgeable enough about their jobs. We will briefly look at it.

A) Managers of the Administrative Offices in the Courts although the court's office manager is just an Office Personnel he is involved in the completion of the case paperwork, its course of actions till the issuance of the final verdict of the dispute.

Sometimes, their duties resemble the judicial ones as such that according to article 66 of CLPC, if the complaint or the law suit is not complete, the office manager, in some cases, makes an effort.

To issue a warning for the elimination of the file's deficiencies:

If the problems are not solved in a given time period, he will issue an order to reject the request for hearing or according to article 153 of the same law, the order of providing reason with a reference to the judge can be carried out by the office manager. The lack of paying attention to the deficiencies in the complaint, the lack of coordination between the office staff and the judge of the branch, the lack of courts' offices managers about legal rules and high volume of files that are defective, illegible and or using incomprehensible words for the party who is to receive the summons and or warnings that are as a result of the lack of judge's paying attention and those in charge of office affairs using the wrong words are all the factors for prolongation of hearing.

B) The Secretary's Mistake:

Court's secretaries should have control over the selection of files referred to courts and know which court hearings are too close to each other and adjust the dates of hearing as such that there will not be an overlap lack of managers' awareness about renewal of courts' sessions are detrimental to the delay of hearing court cases.

Lack of Systematic Activity of Guidance and Counseling Units and Judicial Cooperation:

This problem is as a result of the lack of qualified manpower in the guidance and judicial cooperation departments, the lack of necessary motive for hiring qualified manpower in the counseling and assistance departments, lack of supervision over the counseling departments and assistance in writing the complaint forms, lack of paying attention to the role and the importance of counseling and assistance departments and the lack of guidelines related to counseling and cooperation.

Office Staff (personnel):

Office Staff that includes a major portion of judicial branch is faced with a lot of problems such as: making ends meet, job pressure, job instability and lack of care. In addition to these problems, many of them have deprived of usable education in the judicial system and are not aware of office duties and responsibilities. It seems that any of these factors alone is enough to cause prolongation in hearing. It is important to mention that although there is not a referral department in the legal procedure structure as a sub structure of the referral assistance, it is important to mention that referring the file plays an important role in speed up or prolongation of hearing; therefore, it should be done by somebody who is informed and experienced. The proper referral prevents prolongation of hearing because it is referred to judge based on their knowledge, strength and experience. The referral of a heavy duty case to an inexperienced and weak judge and an easy one to an experienced and strong one causes the waste of human power and on the other hand, prolongation of hearing in important cases.

Second Paragraph: The Role of Judges in the Creation of Prolongation:

In the arena of court hearings, judges play the most important roles. The community of judges as one of the most important human factors in the process of court hearings is, at the present time, suffering from increasing problems and deficiencies which in turn cause prolonged hearings and low quality in judicial verdicts.

*The following is a brief description of some of these problems:**1- Judges and Employees' Poor Motivation:*

Lack of paying attention to the judge's interest in dealing with cases, not considering the judges' merits and seniority and giving them the right of choosing the cases, the judge's promotion and appointment, the lack of respect for the judge's dignity in the society and the country's judicial system, lack of paying attention to the Judge's work experiences, efficiency and health of the employee's performance in the system, the lack of having positive feedbacks for doing one's duties, not having enough income, issuing illegal orders to the judge by the authorities, unnecessary interventions of the authorities and so many other things will impede their efforts in reaching justice.

2- Judge's Lack of Expertise and enough Knowledge of the Laws and Unanimity in Issuing Verdicts : Academic and legal information are the most important assets of judges taking into account the fact that as a result of societies' advances and development of social values, new crimes have emerged. The most important peculiarity of these crimes is that they require technical skills and enough information about non – judicial affairs. When we say judges' lack of information leads into prolongation of legal hearings. we mean their lack of knowledge about the nature and the appearance of the laws which, of course, since the volume of country's laws are getting larger, having relative control over the legal titles seems to be more logical than having control over a group of laws. Although in the country's third plan of development, the minimum required degree for having a position in the judicial – related jobs is Masters of Art, so far, no measures have been taken to materialize it. Consequently, this lack of knowledge over the laws and the unity of verdicts lead to the violation of verdicts in higher courts, repetition or delay in the times of hearings and ultimately prolongation of legal procedure.

3- the Lack of Paying Attention to Competency in Judgment :if a judge, once a case is referred to him, admits that he is not qualified to hear the case, he will announced it right away without wasting time and consequently no prolongation of hearing will occur.

4- The Lack of Supervision on the Clerical Staff and Judicial Personnel: A big portion of legal tasks is related to registration of files, adjustments, writ of summons, appointments. Judges have to impose continuous supervision over the members of the clerical staff to make sure do their job excellently. However, presently, judges have no control over the selection or change of their staff. This lack of supervision and the lack of guarantee for his power of execution result in the office clerks not to know how to do their tasks properly.

Among those who help the judge to issue a verdict, we should have high respect for the experts. Some laws are not carried out in deprived areas of the country, there is a lack of experts.

There is a lake of proper procedure for identifying and classifying experts. Official experts of the law refuse to travel to deprived areas. Too many cases are referred to too few experts. Presentation of vague insufficient or general views makes the courts have experts' second opinions and this will delay legal procedures.

5- Judges' Absenteeism at Hearing Appointment or Hourly Leave of Absence: Providing a guideline requiring the supervision of authorities over the presence of judges at the hearing appointments will easily solve the problem.

6- Lack of precision in Issuance of Orders: issuance of in effective orders by the assigned judge, for example, asking an expert for a reason that is not so relates to the lawsuit are some of the reason as to why legal procedures are prolonged.

Also, orders are to be recorded on court letter heads. recording those orders on the margin of papers, on the back, without mentioning a dates the legal position of the recorder, his / her name and last names leads into confusion for the parties of dispute, their lawyers, the judicial inspectors and even the waste of time .

7- Problems Related to legal Medicine: Lack of promptly sending the injured to legal medicine by the judge and delay in answering the technical commission to the facts or inquiries cause delays for having access to the bailiff's reports.

8- The Poor Quality of legal Verdicts : considering quantity rather than the quality of judges when it comes to evaluating their performance, lack of proper manpower, lack of structure for evaluating the quality of legal verdicts, lack of attention to the judge's expertise hearing the public's judgment of them and or experts in the judgment's quality, weakness in the legal counseling centers for judge, high volume of lawsuits and the lack of paying enough attention to the quality of the verdicts are some of the reasons for the weakness in issuance of verdicts and consequently an increase in the statistics of those not happy with the verdicts are some of the reasons that ultimately lead to the prolongation of hearing process.

9- Lack of Supervision on the Bailiffs involved in Initiating a Lawsuit: in criminal cases during preliminary investigations, the bailiffs of judicial power have important roles in collecting evidence against the defendant, considering the importance of the matter and the change in the system of the judicial apparatus from a public court to the of improving the public prosecutor's office and close connection between the authorities of the public prosecutor's office with the administration of justice's bailiffs, the criminal judge's being active and as much supervision as possible by judges over the bailiffs are required. Negligence will lead into sending more files back to the police stations for conducting more investigations and sometimes even the disappearance of evidence to prove the case.

Spending work time to take care of personal business, attending meetings and seminars during the time judges should be hearing court cases are some other reasons for prolongation of legal procedures.

At the end, we should mention that a judge cannot do his job of solving problems without improving the administrative structures. Many people in the academics, judges and attorney believe in tangible evidence and facts as reducing the time or duration of hearings cannot be by judges.

Third paragraph: Strategies for Prevention of Hearing Prolongation judicial power is one of the important institutions in the country and it needs the serious cooperation of the legislative and executive powers for a better performance. Since judicial power is a sensitive one, there are a lot of criticisms against it and the smallest deficiency will be ignored by critics. Therefore, the authorities are expected to bring the current deficiencies down to the minimum. Improvement and change in the judicial trend for reaching the desirable.

Perfection have always existed and this objective meaning the judicial development will not materialize unless lawyer and knowledgeable judges help to analyze the current system and listen to criticisms and recommendations and take effective steps for deleting this problem. Generally speaking, some of the strategies are as follows:

A) Reforming the laws play and important role in carrying out justice in a reasonable time period. In this regard, reforming the laws related to legal procedures which is the method of hearing disputes, is especially important, it seems that, in this regard, common skills in legislating the laws of either external or internal nature such as making the law explicit and eloquent and having the guarantee for execution and preparation of a legal bill, conflicting laws should be completely cancelled.

B) Providing necessary manpower: Overwhelming a branch of court with too many cases is beyond human power and it will have no outcome other than a heavy a heavy traffic of court cases. In this direction, attracting enough manpower will lower the work overland and reduces the work volume.

C) Reinforcing Arbitration Institutes: Increasing the social participation and using the strength of civil institutions and reforming the culture of referring to the courts of law as the only solution for the achievement of violated rights are the important.

Factors in the reduction of the number of plaintiffs going to courts:

In Iran's legal system, a visible manifestation of arbitration is seen in setting up conflict resolution council.

D) Using Technology: using technology and knowledge to accelerate the hearing is very effective using technology plays an effective role in strengthening the foundations of justice from the first phase of presenting the dispute to the moment the verdict is issued that is in conformity with technical and scientific advancement and reinforcement of receiving legal information for the elimination of doubts (s) from legal issues and judges' having quick access to the rules. Also, in this direction, we can eliminate prolongation by offering software's for laws and consulting opinions with possibility of advanced investigation methods, the difficult method of finding the law pertinent to case in question which is one of the reasons for prolongation of hearings.

E) Unity in the legislation source and entrusting legislature entirely in the hands of the legislation power.

F) Bringing harmony between the number of hearing cases and the number of branches of hearing. Spreading the geographical distribution of legal complexes to reduce the heavy traffic of hearing cases in branches.

G) Creating appropriate structure for moving judges around and or change of jobs, creating harmony between the payment system and the judges' quantitative and qualitative performance. Setting up a system of attracting, selecting and promoting the country's legal managers, taking a second look at the system hiring the legal and clerical personnel and matching their duties with their qualifications, expanding cooperation facility, for the legal and clerical personnel in regards to their welfare, consumption of goods and living accommodations, and ultimately, planning technical curriculum for judges in the direction of eliminating the judges and other employees' weak motivation.

There are other issues that we can refer to and they are:

- 1- Improvement of processes. Forms and procedures
- 2- Increasing interactions and in both inside and outside of the organizations
- 3- Centralization of the affairs related to legal matters
- 4- Respecting the citizens and protecting their right while the hearing processes keep going.
- 5- Creating change in the rewards and punishments system to accelerate the hearing process.
- 6- Creating a telephone counseling center in each district having a high number of plaintiffs.

Conclusion:

Prolongation of hearing process is one of the most important damages to the legal system in order to achieve justice and it happens because of a lot of reasons.

The judge cannot reach desirable conclusions resolving conflicts without reforming the clerical and judicial structure. The judge alone is not responsible for the prolongation of hearing process.

Accepting this fact requires the identification of factors responsible for prolongation in order to prepare the opportunities for the achievement of justice. Despite the disorders, the judge will try again to reduce the duration of prolongation because he considers his dignity and the existence of the (legal) organization are at the mercy of granting justice.

In recent years, excellent measures have taken place in the direction of eliminating prolongation and they include:

Compiling the necessary regulations for becoming an attorney on 1384/7/3 in order to correctly lead the legal procedures and prevent prolongation of legal hearings.

Using new information technology in some judicial complexes to register complaints and following through virtual reality

-The judicial power issued and orders on 1383/11/18 from the Supreme Court justice a comprehensive plan for reducing the prolongation of hearing. In this plan all the factors and elements involved in prolongation of the justice process were pointed out.

Some of the contents of this guideline are as follows:

- 1- Creation of administrative committee for the elimination of hearing prolongation
- 2- Recounting the court cases and providing precise statistics.
- 3- Controlling the presence and absence of the judicial and clerical employees.
- 4- Giving appointments correctly

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