

THE ROLE OF THE COURT IN THE MANAGEMENT OF PROCEEDINGS IN THE TRANSNATIONAL CIVIL PROCEDURE SYSTEM

Abasat Pour Mohammad¹

Hojjatollah Nouri²

Abstract

Nowadays, the principle of cooperation between the judge and the parties (*Le Principe de coopération entre le juge ET les parties*) is dominant in the context of dealing with disputes. This principle has roots in the principle of honesty in the fundamental rights of procedure (*Le Principe de loyauté en droit processuel*) and it could be traced back to various countries' rules and regulations. Determination of the manner of cooperation between the judge and the parties to the dispute as well as the issue of preference of one over the other are also important subjects in the literature of modern procedure rights. The evolutions of modern legal systems show that the majority of efforts in the context of proceeding are aimed at the creation of a fair and truth-oriented system. Achieving the former requires a precise and comprehensive schematization of the proceedings in a way that all the players related to the dispute (the judge and the parties) are provided with equal facilities to reach a verdict. In this legal worldview, the proceeding is not a quarrel for victory; rather it is a deployed context that requires a goodwill wielded cooperation between the judge and the parties.

Keywords: parties of disputes, procedure, court, judge

INTRODUCTION

With no doubt, the overall aim of every legal system is to maintain order in the community and to obtain justice as the basis of creation and its desirable goal. For several years legislators and legal scholars believed that justice would be yielded through the precise ordaining of rules of nature. In fact, they ignored the concerns related to the procedure and their deep impacts on the realization of rights while focusing all their efforts on essential justice. However, the failures of certain legal systems that were manifested in forms of fluctuating waves of reformation showed that laying down the rules of nature and precision in doing so are only some parts of the route towards obtaining the former while the rest of the route is concerned with the reformation of rights of procedure.

Researchers in the field of procedural justice have made efforts for analysis of court systems and their

¹ Assistant Professor, Department of Law, Maragheh Branch, Islamic Azad University, Maragheh, Iran. E-mail: dr_a_p2o@yahoo.com

² PhD Student, Department of Law, Maragheh Branch, Islamic Azad University, Maragheh, Iran. E-mail: hojat.nouri.hn@gmail.com

governing rules. They have unveiled the manner in which an unbalanced court system can obliterate the truth and cause the rights to be excluded from the world of law. These theories have shown that the level of satisfaction of the players in a dispute including the judge, the plaintiff and the defendant is more important over the level of satisfaction of the plaintiff of an unfair, long and costly proceeding. On this basis, while emphasizing the high position of the civil procedure, we have made an effort to investigate a part of the former in the form of a scientific study in order to scrutinize the roles of the judge and the parties of disputes in the management of thematic and peremptory affairs while clasping to the newly stated theories and the general principles governing the civil procedure.

In the present study, the word management is used to refer to the implementation of solutions for the determination of the manner of cooperation between the judge and the parties in civil procedure cases. In addition, by thematic it is referred to the affairs that take place in the external world irrespective of legal rules and theories. On the other hand, peremptory affairs include sentences and measures towards the application, execution and interpretation of sentences. Therefore, the subject of the present study shows the interactive roles of the judge and the sides of disputes in the management of thematic and peremptory affairs (Langroodi, 2007: 763).

The purpose of the present study is to find solutions for further extension of the roles of the judges and the sides of disputes in the management of thematic and peremptory affairs respectively. In fact, the range of influences of individualists' views on Iran's scientific and judicial atmospheres has created impenetrable boundaries between the rights and duties of judges and parties to disputes. In addition, the roles of judges in the management of thematic affairs and, sides of disputes in the management of peremptory affairs have been transformed into rather passive roles with their legitimate positive effects on the performance neglected. On this basis the authors of the present study were motivated to scrutinize the issue of the management of peremptory and thematic affairs from a new approach through the application of the theory of cooperation which has been the basis for the laydown of current modern rules and its reflection is also evident in Iran's civil procedure act. In other words, this paper is an effort to redistribute and or to re-explain the roles of the judges and the parties to disputes in the management of thematic and peremptory affairs. On the other hand, the secondary purpose of this article is to obtain a new method of procedure capable of providing the Iran's procedure system with suggestions. In fact, scrutinizing the Iran's procedure system, even the few observations that have been reflected in the literature of the subject matter, shows that the system under scrutiny is still under the influence of liberalist thoughts. Therefore, the present article is considered as an effort to adjust the mentioned approach in a way that new horizons are revealed for lawyers and judges by which the obstacles on the route towards obtaining the truth would be mitigated to a certain extent.

The present study is an analytical-fundamental study and its data have been collected through library

studies. It has been tried to make references to several books written by various authors in order to investigate and review their views. Nonetheless, the former reviews yielded certain results which were interpreted using judges' verdicts.

Since putting the advantages and weaknesses of every procedure system under the spotlight is subject to reviewing other legal systems, we have made our best efforts to make use other countries' rules and legal doctrines especially the French civil procedure code and the transnational civil procedure principles which has been used in the codification of several rules.

As soon as the proceeding or procedure commences, both the judge and the parties to the dispute focus on certain affairs in order to obtain their goals. These affairs are divided into the two categories of thematic and peremptory affairs. In spite of the facts that separating these affairs is followed by several legal effects and that the former separation has been exclusively paid attention to by legislators of laws including the French civil procedure Act and the principles of Transnational civil procedure; Iran's general rules and regulations have ignored these concepts with only a single constitutional principle referring to them (principle 171). Without any doubt, missing these concepts has been reflected in the works of well-known lawyers; in other words, the empty place of these concepts can be felt while reading the works of popular legal scholars. The former lack of separation has usually been followed by negative effects on Iran's judicial system. Issues such as unclearness of the stand of judges against the improper description of facts related to the dispute, rather unlimited privilege of Iran's Supreme Court in interpretation of contracts and evaluation of causes, passiveness of judges in peremptory affairs and, the experts' commentaries on the peremptory affairs of disputes are some of the problems faced by Iran's justice system.

REQUESTS OF SIDES OF DISPUTES

In civil procedure, the will of the sides of the dispute can be manifested in the form of requests. These include dispute's sides' requests from the court at the beginning, during or, at the end of their lawsuits (Poor Ostad, 2008, 103).

SUPPLEMENTARY-NESS OF RULES IN CIVIL PROCEDURE LAW

Certain contexts (considering which, some lawyers believe that this branch of law is a subset of the public law) cannot prevent the adjoining of civil procedure law with the private law. This is because the will of sides of the dispute is influential in these apparently inviolable rules. This will may include: the initiation and termination of the proceeding is in the hands of the sides of the dispute; the civil lawsuits can be transferred to other parties (like transferable objects); a large portion of proceeding-related affairs are subject to the requests and wills of the sides of civil disputes such as request for supply or a request for an arrest warrant on a third person. On this basis, the

authors of the present study believe that not unlike other branches of law, the principle in this branch too is that the rules are interpreted arbitrarily.

BELONGING OF CIVIL CLAIMS TO THE SIDES OF CLAIMS

Since civil claims are commenced and terminated by one of the side of disputes, therefore civil claims can be considered as objects in possession of the defendant and plaintiff (Poor Ostad, 2008: 102).

Nowadays, various advanced legal systems around the globe are making efforts towards the development of the role of the wills of the sides of disputes in civil proceedings and also believe that the rules in this context are of supplementary type and have proposed the approach of contractual justice. This approach rises from a view in which the possibility of influence of contract in the process of civil proceeding is investigated (Cronus, 2007: 241-245).

The present study investigates the initiation of civil procedure from the view of this approach.

AGREEMENT OF PARTIES REGARDING LIMITATION OF LITIGATION RIGHT

According to the article 34 of the constitution of Iran, litigation is the absolute right of every person. Regarding the right to litigation, a question rises whether this right can be limited based on an agreement between the parties or not? For example, it is asked whether the contractors can void any right to litigation in their contract or not? It is obvious that the case in which a person contractually voids his/her right to litigation is out of the scope of the present study, since this is in conflict with the content of the article 959 stating that complete voiding of civil rights is prohibited. In general, the voiding of the right to litigation or leading can be investigated in three contexts:

1. in some cases, the parties are absolutely after voiding the right to litigation. In these cases, we are referring to instances in which a person cannot use his/her right to litigation. For example, assume a case in which the contractor clearly states in the contract that the other party will have no right of action against the contractor.

First of all, it should be mentioned that our assumption does not include a case in which the contractor tries to deceive the customer and void his/her litigation right intentionally since such an agreement would be in clear conflict with the public order and ethics that govern the contracts (Katoozian, 2010: 223).

Someone might say that litigation is a civil right and not unlike other civil rights, the one who possesses such right can void it too. However it seems that this reasoning is improper since on the one hand, the voiding of the right to litigation is only possible under urgent and necessitating conditions (Mirfatah, 1417A.H, 2: 513), and on the other hand, a right without a guarantee is nonsense (Matin Daftari, 1999: 20-22). So how can we assume a case in which the customer has right but there is no support for his/her right?

2. Another instances in which the parties of a contract may agree to void their right to litigation include cases in which the parties are partially after doing so. This is stated in two forms:
 - a. Where the right to litigation is only valid for the parties for a limited length of time. For example, in a contract it may be stated that the sides of the contract can only have a right of action in the two following years after the contract. Or in another instance and for the sake of assuring the customers that the contractor will deliver his/her commitments, a contractor may state in the contract that in case of violation of commitments, the customer can have a right to litigate only within a six month period after the occurrence of violation.
 - b. Sometimes the voiding of the right to litigation may be caused by a specific factor other than time. For example, in cases where the contracted subject is defective, the buyer can void the contract through referring to the defective-state of the contract subject. In some cases, the contractor might have sold the contract subject while stating that no defections would be of his/her responsibility. In this case, the contract cannot be voided. In other words, it can be stated that the voiding of the right to litigation can be proper in this case since it is of legal support. Another reason to consider this agreement valid is that the guarantee for deliverance of right is still in its place, but its enforcement is subject to a specific period of time. In fact, in several cases the legislator holds that the enforcement of some rights is bound to a specific period of time. In these cases, when the time expires, no further right could be assumed for the parties.
3. The third type of voiding of the litigation right is specific to cases in which the parties have only voided their right to litigate through judiciary authorities and therefore, in case of occurrence of disagreements between the parties, it would only be possible to consider non-judiciary methods and authorities for the settlement of the conflict. An instance for this case is the arbitration eligibility condition by which, an arbitrator is selected as the non-judiciary authority for the settlement of disputes.

It should not be assumed that when the right to litigation is voided, the parties are no longer able to claim lawsuits. Rather the same mutual will that voided the right to litigation in the first place can again provide the parties with a right to litigation. In other words, through a mutual agreement, the parties can make it possible for themselves to claim a lawsuit in courts. This is why in the s1 of the article 481 of arbitration law; compromise between the parties can eliminate the arbitration process. in transnational civil procedure principles, no reference has been made to the litigation limiting conditions. However, the content of the s5 of article 10 of the transnational civil procedure principles can be referring to the acceptability of this condition. By this section, the parties have a right to willingly accept and or terminate or reform the proceeding partially and or completely. In case of harms to the other party, the plaintiff cannot alter or terminate the lawsuit unilaterally. As it was previously mentioned, in fact most of the authors have maintained that not unlike objects, claims also belong to the sides of

disputes (Ghomami & Mohseni, 2011: 98). The parties can determine the quality of their procedure according to their will and innovation and decide upon its termination. One case in which the parties can relinquish their claim is the one in which the parties have voided their rights to litigation in the initiation of their contract. On this basis it can be stated that the limiting conditions of the right to litigation are consistent with the s5 of article 10.

GENERAL AUTHORITY OF THE COURT

1. The court can give orders upon the necessity of parties or others for doing something. However, it is only possible when it is necessary to maintain a main request until the absolute verdict is announced. Issuance of such an order and its limits are functions of the principle of proportionality. Disclosure of the properties of the parties can also be ordered by the court. The issue of temporary measures may be due to necessitating a person to do or not to do a certain act. For example, in terms of prohibiting an act, consider a case in which the properties related to the issue of the claim must be kept in their present condition. This regulation provides the court with the ability to issue an order with either an exigency or a prohibitory aspect. Here, these expressions include concepts such as distraint orders and etc. The concept of maintaining or keeping the current condition includes acts aimed at reformation of the basis of the conflict. For example, monitoring the management of cooperation in the process of proceeding can be an instance. The possibility of requesting temporary measures such as distraint should be specified by the court site law. In addition, the court can issue an order to disclose the properties of the parties of a dispute, no matter where they are located; and it can also accept the order on taking precautionary measures in order to facilitate the process of arbitration and or to enforce the content of the orders of temporary measures in arbitration. If the court site law allows, after the court has given a conventional warning to its addressee, it can require the other people who are not among the parties to the dispute to adhere to the content of the issued order. In addition they may be required claimed properties with themselves and act upon them only according to the instructions provided by the court.
2. Courts can issue an order of precautionary measures without receiving a response from the defendant only if the plaintiff is able to prove the necessity for making an urgent decision. In fact, the plaintiff must make the court aware of his/her request's thematic and peremptory aspects. This rule allows the court to make a decision without needing to warn the defendant. However, it would be possible only when there is an urgent necessity for doing so. The former term, urgent necessity is required as a basis for making *ex parte* decisions and it is also a practical concept similar to the concept of priority of affairs related to equity. The latter expression is consistent with the concept of balance of equities in the common law. Affairs related to equity include the following: the amount of robustness of essential affairs that form the

basis of the request for temporary orders shows the urgency of the need for execution of arbitrary measures and their practical effects. Such orders are usually known as *ex parte* orders. In the common law procedure, such an order is usually referred to as a temporary restraining order.

3. The person against whom, an *ex parte* restraining order is issued, should have the opportunity to object the basis of court's order. In terms of dealing with requests for issuance of *ex parte* orders, the courts deal with the question whether the requester has efficiently and adequately proved that issuance of such an order would prevent an irreparable loss or not and that, whether it is prudent for the court to delay the issuance of order until the defendant stands in the court. The burden of proving is with the requestor of *ex parte* order. However, the person against whom the order is issued must be given a chance to express his/her statements as soon as possible. In addition, the defendant must be provided with the capability to request a re-assessment and or to object the adopted decision. In general, the principles of procedure maintain that the requestor of the *ex parte* order should disclose the entire aspects of the situation at hand to the court. Negligence in doing so can cause the *ex parte* order to be void and also it can provide the basis of creation of a responsibility for damages against the requestor or *ex parte* order.
4. After hearing the statements of the beneficiary, the court can decide upon issuance, voiding and or extension of *ex parte* orders. As it has been concretely mentioned in the above rule, if the court has denied issuing an *ex parte* order, it still can issue an order after hearings. If an *ex parte* order has already been issued, the court can void, extend and or reform its previous order under the light of facts. The burden of proving the legitimacy of extension of the order is with the requestor.
5. If after the issuance of the *ex parte* order the court finds out that it was wrong to issue this order, the requestor would be responsible for the entire probable damages to the other party. In addition, the court can take a guarantee from the requestor so that he/she would compensate for the entire probable damages. This rule allows the court to urge the requestor of the *ex parte* order to provide the court with a suitable guarantee for compensation of the entire damages. The details are specified by the court site law.
6. Issuing an *ex parte* order and rejecting a request for issuing an *ex parte* order are revisable and urgent to be dealt with. Parties can also object the acceptance or rejection of the request for issuing an *ex parte* order according to the laws of the court site.

THE ROLE OF COURT IN MANAGEMENT OF PROCEEDING

The courts manage the proceedings in active and time-agile manners within the framework of legal procedure. The court will effectively and in a time-worthy manner use its evaluation and detection eligibility to the aim of fair settlement of disputes and claims. Here, the transnational state of the disputes must be taken into

account too. As long as it is possible and logical, the court will manage the process of proceeding with cooperation of the parties. The court defines an order in which the issues are needed to be investigated. In addition, the court specifies a schedule for every phase of the process of proceeding. Nonetheless, the court is always able to make changes in the affairs which have been determined by it. Proceedings are the intersections between two types of benefit being the public and private benefits. Although in current civil proceedings, the private benefits are dominant over the trials, principles such as the dominance of parties over the subject of the claim, fairness and etc. count orders for guaranteeing this benefit. However public benefits also require the process of proceeding to be carried out in a fair shape and with the cooperation between the judge and the parties. In this regard, the movements of proceeding systems are significant.

1. In the entire phases of proceeding, the court must have an active role in the management of claim. The court must also pay attention to the transnational aspect of the claim.

This rule determined the role of the court in organizing the lawsuit and preparing it for final procedure. Regarding making a decision about the manner of putting an end to the middle phase and making a decision regarding the manner of anticipation of the final phase of proceeding, courts have an extensive authority.

2. In the beginning of the process of proceeding, the court must hold a meeting for planning; in addition, in order to clarify the subjects and to determine the condition of dispute in the final proceeding phase, the court may decide to hold more sessions. Through the application of existing means of communication including telephones, video-conferences and or alike, the court can hold the follow-up sessions. Nevertheless, the court specifies a date or several dates for follow-up or proceeding sessions. The attorneys of the parties are obliged to be present in these sessions. This is in order to facilitate the advance of the process of proceeding in an ordered manner and to settle the dispute as effectively as possible. In most legal systems, attorneys have a type of capability to make agreements regarding the manner of handling of the dispute. In some other systems, it may be parties who have higher authority in this case. If the issues that should be processed are outside the scope of attorneys' powers, they court can oblige the parties to personally make presence in the court in order to discuss the manner of advancing the process of settlement of the dispute in addition to discussing other issue such as compromise between the parties. Nonetheless, in sessions that are held after the primary planning session, the court must pay attention to the following:
 - a. The issue in the case must be subjected to discussions
 - b. It must be determined that which of the thematic affairs, claims and or defenses are not subject to disagreement.

- c. Have there been any new claims and defenses? Which causes would be accepted in the final phase of proceeding?

The main purpose of holding the aforementioned sessions include: leaving aside the issues that are not subject to disagreement; precise identification of thematic affairs, claims and, defenses and the causes in cases of subjects which would be assessed in the final proceeding session. Still, the court can exceptionally proceed simply based on the plea and the statements of the parties.

3. For the purpose of management of procedure, after discussing with parties the court can do the following:
 - a. Suggestion of reformation on the plea and the defense statements with the aim of reformation, addition and or elimination of certain claims, defenses and or issues with respect to the disagreements between the parties at that specific phase.
 - b. Issuing an order for separate proceedings and making decisions regarding the issues stated in the case and announcing a verdict that is consistent with these subjects and their relationships with other subjects.
 - c. Issuing an order for integrated proceeding of claims that have been brought to the court. Including a decision regarding whether the claims must be dealt with through making reference to the transnational laws or the laws of the court site, under the condition that the order must facilitate the processes of proceeding and decision making.
 - d. Making a decision regarding the acceptability of causes in addition to the order and times of dealing with the cause and other affairs that could facilitate the proceeding
 - e. Ordering every competent person to provide the court with documents and or causes

After consulting with the parties, the court can provide solutions for final proceeding in the way laid down in the upper rule. The court can summarize the content of claims and defenses, and or specify the subjects related to the acceptance of causes, validate the ones that are considered as acceptable causes and also make decisions regarding the order of dealing with them. Nevertheless, the court is able to deal with claims involving classified causes. The court must specify a date for the final proceeding and also it must issue other orders that guarantee the fairness of the procedure. It is the court that approves various measures aiming at facilitation of an effective proceeding. Usually it is useful for the court to separate several issues from each other so that they would be processed at once. Also in cases in which the subjects of two or more disputes are similar and or have basic similarities, it is usually useful for the court to deal with these cases together. As it has been accepted in the above mentioned rule, the courts must decide upon the acceptability of causes before they are accepted, especially for complicated causes such as detailed documents.

4. In order to further facilitate the adoption of an effective decision regarding a dispute, the primary court

may manage the causes in another location, or it may refer to another court in its site or in another country or to another judicial authority who has been specifically in charge of dealing with such issues.

5. At any phase, the court can suggest the parties to refer to arbitrators for the settling of their dispute in the most effective ways. In case of receiving requests from the both sides of the dispute, the court must halt the process of proceeding until a suitable alternative settlement solution has been selected by the parties. The court can investigate the possibility that the parties can refer to an arbitrator or a mediator for the settlement of their dispute. In such a situation, before making macro decisions, the court can order a session for exploration of the possibility of compromise and for possibility of referring the case to arbitrators for mediation. This rule provides the court with the ability to persuade the parties towards negotiation, however there should be no compulsion in this regard. If a compromise was made between the parties, the procedure ends naturally and the verdict will be laid down. If the parties agree on referring to an arbitrator, the agreement must be maintained in the case and the proceeding must be halted. The judicial authority, who has been appointed in another place and is in charge of management of causes, can be a judge, a special juror, a magistrate, an arbitrator or a person with legal knowledge who has been appointed by the court (Poor Ostad, 2008: 166).
6. The court can make use of a variety of communicational means including remote communication instruments such as video or audio broadcasting.
7. The hearing time starts with the communication with the party who is responsible for an action.

CIVIL PROCEDURE SYSTEMS

The approaches, principles and proceeding principles in conjunction with the role of guidance and management of procedure by the judge and the parties depend upon procedure systems (Mohseni, 2007: 234). In the accusatory civil procedure system, the plaintiff pursues the defendant and the proceeding process is determined by the plaintiff and defendant. This system has other features among which it can be referred to the conduction and management of the claim by the parties and their attorneys. In newer evolutions, these systems have been merged in the way that the requirements of the accusatory system are satisfied. In the new system, the primary phase of the civil procedure is prepared through the two stages of preparation of case and trial which is bound to the acceptance of the general and specific aspects of civil disputes. It also has a great focus on the reciprocal roles of the judge and parties in the process of proceeding (Mohseni, 2007: 235). Current judicial systems are moving towards the management of the proceeding based on the cooperation between the parties and the judge. For the purpose of fair settlement of disputes with rational speeds, courts must actively manage the proceeding in the shortest of times. In addition, courts must pay attention to the transnational feature of disputes.

Nonetheless, the court must make efforts to manage the proceeding through consulting with the parties. Many judicial systems have fixed regulations and rules for the management of proceeding. A court can manage the proceeding in a more fair and effective manner only when it consults with the parties .

In addition, the court must specify the order in which the disputes are settled. Nonetheless, a schedule must be made for it. Nonetheless, the court is able to reform these scheduling, especially in case of complicated disputes. In practice, timetables and alike are of less use in case of simple claims, however, the court should always have its schedule specified.

THE RECIPROCAL ROLES OF THE JUDGE AND PARTIES IN THE MANAGEMENT OF PROCEDURE

Considering the specific effects of every procedure system, the least manifestation of fairness in the process of proceeding is where the outcome of the process of settlement of the dispute is the product of cooperation between the judge and parties. On this basis, in different countries, proceeding laws have considered a right to manage the procedure for both the judge and the parties. On this basis, although the French civil procedure code maintains that the parties of the dispute will manage the proceeding according to their responsibilities and they have to adhere to the pre-specified rules and regulations; the article 3 of this act maintains: the judge is in charge of monitoring the properness of management of the proceeding and he/she has the power to determine the times and to issue the necessary arrangement.

Nonetheless, in its s1, the article 1 of the British civil procedure code anticipates a certain set of determining goals for the purpose of fair proceeding while in its second, third and fourth articles, it maintains that both the judge and the parties are obliged to cooperate in order to put the former goal into effect. In addition, according to the article three of this act, the British courts have the power to manage cases too. In this regard and considering the recent evolutions in England, certain researchers have come to the conclusion that currently, the British judicial system is a combined system. The contents of the article 14 of the former law tend to aggregate the civil procedure systems regarding the authority in the management of proceeding. This principle maintains that it is the court's duty to conduct and manage the process of proceeding which must be done collaboratively and within the framework of proceeding regulations. It is only in this case that it can be claimed that the proceeding has been conducted fairly and more efficiently. In this regard, the judge has the power to determine the schedule and timetables. His/her evaluator privileges are based on justice and since in every act of the judge, it is the justice that is of concern and importance, he/she can alter what he/she has maintained or determined. As instances, it can be pointed to internal rights which refer to these actions of the courts as managerial acts. These measures are free from judgment.

CONCLUSIONS

Nowadays, many advanced civil proceeding systems around the globe have accepted the supplementary state of the approach of contractual justice. The will of the parties is manifested in two forms, one being the unilateral will of parties and the other, being the mutual will of parties. It has been said that mutual will is the product of compromise and agreement between the parties. One important manifestation of the effectiveness of the mutual will of parties at the initiation of civil proceedings is the limitation of litigation right. 1-Absolutely, it has been determined that in case of voiding of the right to litigation and lack of existence of any legal support, such voiding of the right to litigation is not proper; 2- partially; 3- being after the limitation of the right of litigation irrespective of judicial authorities has been said to be a proper type of voiding of the right to litigation. In accusatory proceeding systems, it is the parties and their attorneys who are majorly effective in the process of management of the dispute while in other systems it is the judge who has higher privileges in the conduction of the proceeding. In the new system which provides better support for both types of civil procedure, a higher attention is paid to the mutual and or the reciprocal roles of the judge and the parties in the process of the proceeding. The result would be fairer and more effective and yet faster settlement of disputes. In fact, current judicial systems are based on the very method of cooperation between the parties and the judge.

O PAPEL DO TRIBUNAL NA GESTÃO DO PROCESSO NO SISTEMA DE PROCESSO CIVIL TRANSNACIONAL

Resumo

Hoje em dia, o princípio de cooperação entre o juiz e as partes (Le Principe de coopération entre le juge ET les parties) é dominante no contexto de lidar com disputas. Este princípio tem raízes no princípio da honestidade nos direitos fundamentais do processo (Le Principe de Loyauté en droit Processuel) e pode remontar às regras e regulamentos de vários países. A determinação do modo de cooperação entre o juiz e as partes na controvérsia, bem como a questão da preferência de um sobre o outro, também são temas importantes na literatura de direitos processuais modernos. As evoluções dos sistemas jurídicos modernos mostram que a maioria dos esforços no contexto do processo visa a criação de um sistema justo e orientado para a verdade. Conseguir o primeiro requer uma esquematização precisa e abrangente do processo, de modo que todos os jogadores relacionados com a disputa (o juiz e as partes) recebam facilidades iguais para chegar a um veredicto. Nesta cosmovisão legal, o processo não é uma briga pela vitória; em vez disso, é um contexto implantado que requer uma boa vontade de cooperação entre o juiz e as partes.

Palavras-chave: Partes das Disputas; Processo; Tribunal; Juiz.

REFERENCES

CORNU, Gerard (2007), **Vocabulaire Juridique**, Paris, Puf quadrig.

GHOMAMI, Majid and MOHSENI, Hassan (2017). **Transnational Civil Procedure Tribunal**, Tehran, Public Joint Stock Company.

HASSAN ZADEH, Mahdi (2013), the Effect of Removal of Proceedings and Third-Party Protest on the Execution of a Sentence, **The Law Schedule**, Period 43, No. 1.

HEZARD, G.; Taruffo, M. (1993), **American Civil Procedure: An Introduction**, U.S., Yale University press.

JAFARI LANGROODI, Mohammad Jafar (2007), **Expanded in the Law of Terminology**, Volume I, Tehran, Library of the Treasure of Knowledge.

KATOOZIAN, Nasser (2010), **Modal Contracts**, Volume Four, Tehran, Public Joint Stock Company.

MARAGHI, Mir Abdolfattah (1417 AH), **Al-Avawan Al-Foghieh**, Volume II, Qom, Islamic Bookstore of the Teachers Community of Qom Seminary.

MATIN OFFICE, Ahmad (1999), **Civil Code of Civil Procedure**, Volume I, Tehran, Majd Publications.

MOHSENI, Hassan (2007), Civil Procedural Laws, Laws of Law, **New Law Journal of Faculty of Law and Political Science**, University of Tehran, 2009, No. 1.

POUR OSTAD, Majid (2008), Principle of the rule of civil disputes, **Journal of Law**, Period 38, Number 3.

PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE (2004), **By the American Law Institute UNIDROIT**.

RESEARCHER OF THE GROOM, Syed Mustafa (2008), **The rules of jurisprudence**, Tehran, Tehran University Press.

Trabalho enviado em 26 de março de 2018.

Aceito em 16 de abril de 2018.