

Investigating Basic Principles and cases of stay of proceedings in the civil procedure Code

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ABSTRACT

Fair trial is one of the fundamental rights of the parties that after planning and referring to the Judiciary and beginning to deal, refusal and stay of the claim, is not possible and the court shall review the claims and proceedings and documents of the parties. On the other hand, this fundamental principle in some cases has to be stayed in order to gain the final goal of Procedure and is stayed because of death, incapacity and decline of the position. According to Article 105 of the Civil Procedure Code, to stay proceedings can be divided into two parts: The first part is when death, incapacity or decline of the position of one of the parties, has effect on the proceedings toward others. The second part is when death, incapacity or decline of the position of one of the parties, has no effect on the proceedings toward others. Other cases such as lack of preparation means for enforcement of a judgment and non-payment of expert's wages in appeal proceedings May cause the issuance of stay of proceedings. This article according to the requirements reviews the cases in descriptive method and describes how death, incapacity or decline of the position of one of the parties causes to stay proceedings.

KEYWORDS: Stay of proceedings; death; incapacity; decline of position; decline of proceedings

INTRODUCTION

The provisions of the Civil Procedure Code have been applied in order to guarantee and protect the rights of individuals in society; in a way that without these regulations it is not possible to prove and restate the truth. Accordingly, the legislative authority granted to the holder of the right that in cases where their right has been violated or infringed, refer to the judicial authorities and by proceedings, restate their rights. However, this right of access to the courts for adjudication occurs when firstly, there is a real right or at least there is a claim for that and secondly, this right is violated or denied and it is only in this case that the claimant can submit a petition and proceed. After presenting petition, the court based on the presented evidence and with regard to article 199 of civil Procedure Code, which authorizes the court to take action to uncover the truth, shall proceed the lawsuit and arbitrate enmity with the verdict and cannot, with various excuses, avoid or prolong the lawsuit. The duty of the court to expedite the proceedings of sentencing and ultimately to arbitrate enmity, is part of imperative law that is related to court order therefore, the legislator has considered criminal sanctions for breach of the duty (Article 597 The IPC).

Expedite the proceedings without any delay requires that the court encounter with a simple hearing without any incident (Tavari). In this case, by performing a simple investigation, Proceedings leads to sentence. While nowadays, given the complexity that arises in the cases and the options legislator gives to parties about lawsuit and proceedings, which give them capability to delay, stay or decline the proceeding in different ways, generally we can say that incident is conceivable in all cases.

Some of these incidents are because of precautions that the legislator has put in order to protect the potential rights of the parties and avoid wasting it; Such as garnishment, preservation of evidence and temporary order, some incidents during proceedings, concerns the proof of lawsuit and others concern the delay of the proceedings. One of the most important incidents that affects proceedings and impairs its process is the one that causes stay and decline of the proceedings; therefore, some provisions of the Civil Procedure Code is dedicated to this discussion that in this paper, while investigating them, we analyze stay of proceedings.

Reviewing the main items of stay of proceedings

The items of the decline and stay of proceedings and its effects

Types of incidents declining the lawsuit

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Decline of the proceedings due to the occurrence of incidents is achieved in two ways: Sometimes these events are related to the proceedings, it means that the direct effect of the occurrence of incidents is the decline of the proceedings without damaging the original right or claim. Such as the rejection of the claim referring to article 19 (Article 19 of Civil Procedure Code: Whenever considering a case hinges on proving a claim that another court has jurisdiction about it, Dealing with the case stops until the decision of the competent authority.) In addition, Section B of the article 107 of Civil Procedure Law the annulment petition in Section A of the article 57 and article 96 of Civil Procedure Law. Sometimes the incidents do not directly affect the proceedings but will indirectly cause the decline. In other words, the effect of this incident is the decline of the claim and because the procedure is based on a lawsuit by declining the case, proceedings is missing too. For example, in non-transferable claims that the claim declines with the death of one of the parties, based on the decision of the court, the court proceedings would also decline.

It is also the same where the plaintiff has totally forborne his claim and the court issues the fall of claim (Paragraph (c) of article 107 of Civil Procedure Law.) Looking at the different articles of Civil Procedure Code, we find that according to the legislator, two incidents lead to decline of the proceedings: The first set is incidents that are caused by plaintiff not doing court orders or by failure to comply with one of the conditions of proceedings. The second set of incidents is realized by the will of the applicant and in some cases with the consent of the defendant such as reclamation of claim in section A and B of the article 107 of Civil Procedure Code. However, there is a third category that has not been considered by the legislature; these are the incidents that are caused by the decline of the original right or claim and because of the integration between the lawsuit and proceedings are causing the decline of the proceedings. However, since the law does not provide a specific sentence for these incidents, the provisions of such incidents should be stated according to general rules and principles. Among the mentioned incidents, the first category cannot be discussed about; therefore, we just mention some of the examples. The last two categories because of being the main areas of discussion about incidents declining the case, in the following topics will be discussed in detail. Sometimes the legislator requires the plaintiff to do something before the deadline and the importance of this issue is in such a way that if not done, the court would not be able to hear, that is why by its own idea or at the request of the other party terminates the proceedings. Article 256 of Civil Procedure Code: if due to lack of preparation of the device, the execution is not possible and the court cannot issue a sentence, the first petition would be annulled and in the stage of appeal, the rehearing will be stayed but will not prevent the execution of the first sentence. Article 259 of Civil Procedure Code: If the Court in the initial stage, without expert idea or even with the oath fails to issue sentence the petition would be annulled and if it were in the stage of appeal, it would stop but would not prevent the implementation of first sentence. Alternatively, rejecting the petition such as articles 109 and 147 of Civil Procedure Code (article 107 of Civil Procedure Code: withdrawal of claim shall be done as follows:

A – The plaintiff can reclaim the claim until the first hearing. In this case, would issue the annulment of petition.

B - The plaintiff cannot withdraw his claim until the hearing is over. In this case, the court issues the rejection of the claim.

C - After the end of the negotiation between the parties, in one case, maybe the defendant is satisfied or the plaintiff totally forbears from his claim. In this case, the court will issue the fall of claim. Sometimes the court has also anticipated the rejection of the claim. (Article 350 of Civil Procedure Cod: Non-compliance with legal requirements of petition or failure to meet the deadline in removing the defect at the first stage would be in violation of the decision in appeal stage. In these cases, the court of appeals would warn the libellant at the first stage to remove the defects within ten days from the date of notification. In case no action is taken and if the petitioner is not obvious, the court would issue its judgment.) According to the article 350 of Civil Procedure Cod, if the petition at the first stage is incomplete and the court regardless of this fact, has proceeded to verdict these shortcomings are not in violation of the preliminary vote but the court of appeals would warn the preliminary plaintiff to remove flaws from primitive lawsuit within the deadline. If the preliminary plaintiff do not do this order and the court of appeals violates the sentence and issues the rejection of the lawsuit. Although in this case, the legislator considers the action of primitive plaintiff in not proceeding to remove the defects, as incidents of proceedings. However, this may be a pretext for the primitive plaintiff whom the issued sentence is to his detriment in not complying with court order to violate the primitive stage sentence that he had appealed himself. Article 515 of former Civil Procedure Code has anticipated this order and only considered the failure in removing some of the defects of petition as violating the sentence and issuing the rejection of claim. Sometimes the reason for the decline of the procedures is the failure to comply with imperative law related to the conditions of the proceedings, like the one, which is mentioned in article 84 of the Civil Procedure Code. In this case, because the court does not have legal possibility to hear the claim, terminates the proceedings by issuing the rejection of claim. (Article 89 of Civil Procedure Code, except for the objections related to lack of jurisdiction or related claims that in this case the proceedings would not decline but transfer to another court.)

There are several different examples of incidents causing the decline of the proceedings; sometimes this incident is because of the ones that want to forbear the proceedings; in a way that the plaintiff tells to the court that is unwilling to continue the proceedings. Hence, he wants to withdraw the proceedings that have been started by his petition and the return to the state to what it was before the submission of petition. Withdraw from proceedings, depending on the level the proceeding has advanced, is different; if the time of the first proceedings has not come yet, Withdraw from proceedings will happen in the form of withdrawal of petition and in case it is after this period, it will be mentioned under withdrawal of claim.

The benefit of these requests for the plaintiff is that in cases, where the proceedings do not seem beneficial to him, he terminate the proceedings without any restraint to re-establish his claim. For example, after presenting a petition, the plaintiff finds out that he does not have enough evidence to prove his claim or collecting and providing reasons is not possible for him right now or his position is not clear in the petition and he does not have its positive evidence or during the proceedings, the defendant has presented some evidence that the plaintiff has difficulty defending against them. Therefore, he prefers by withdrawing from petition, bring that situation back to its status until an appropriate opportunity to re-claim. Of course, in the proceedings, the withdrawal of some of the proceedings is also conceivable. For example, one of the parties has requested temporary orders, or has requested the other party to bring an oath and prior to court decisions or doing any of these things, withdraws from his demand. Sometimes the incidents declining the proceedings are because of the decline of the claim. In a way that the proceedings has passed a certain level and the plaintiff cannot withdraw from proceedings that in this case the only way to decline the proceedings, if the defendant does not consent to withdrawal of claim, is to withdraw from his claim or to decline the claim in any other way.

The concept of incidents causing the decline and the stay of proceedings, its history and distinguishing it from similar cases

The concept of incidents declining the proceedings

The decline of the proceedings means the deterioration of a trial that the plaintiff has proceeded it. The sentencing of court is the most natural way to decline the proceedings that in which case the court would hear the claim and terminate it by issuing a sentence. The decline of the proceedings happens because of the court terminating the hearing of claim. Thus, the proceedings has proceeded normally and the court, after terminating the hearing, attempts to issue a sentence and in this way does his duty in hearing the claim. Moreover, the decline of the proceedings in this case is along with the termination of the claim and dispute between the parties. However, not always the raised quarrel or dispute, lead to sentencing in court, but before this point, some incidents occur in the proceedings that eliminates the possibility for the court to hear the claim. In this case, the proceedings go out of its natural course and the court, without making any decision about the settlement of nature of the claim, shall make a decision that will lead to the decay of the proceedings. The decision of the court, which will be issued as the final rule, will not disappear the dispute between the parties, as a result, the plaintiff will primarily have the right (except in some cases) to return to the lawsuit. Thus, we should say that the incidents causing the decline of the hearing are the ones that terminate the proceedings before the issuance of the sentence and the sentence of the court could not be a part of this incident. Because the verdict, although is a means of the decline of the proceedings, but cannot be considered as an incident in the decline of the proceedings.

Occurrence of the incidents declining the hearing and consequently the decline of the proceedings, takes place when a proceeding or to be clear, a lawsuit is brought and the proceedings about the mentioned lawsuit is not over yet. The decline of proceedings before the issuance of sentence is an exception to the principle of continuity of the proceedings. So the court is authorized to decide when the hearing is in decline if the legislator has explicitly predicted it or according the legal principles, the decline of the proceedings in some instances is obvious and indisputable. Such as the time when the right basis for a claim is missing in some ways that In this case, declining the proceedings is obvious, although the legislator has not explicitly predicted it. In addition, in cases where the trial court has ambiguity about the certain item causing the proceedings' decline must continue the proceedings.

History of incidents declining the lawsuit

Incidents declining the proceedings have changed over time. So that at every stage of our country's legislation, some items have been added or reduced. One of these changes is not pursuing the proceedings by the parties. There was a theoretical law in the former rule that said when the parties have long abandoned pursuing the proceedings, implies that there is no desire to continue the proceedings and ultimately to issue a sentence. That is why the legislator in these cases used to the decline the proceedings. However, about the fact that the decline of the hearing in this case was under what title, we should say that in the former rule, Civil Procedure and experimental Code of Procedure have been raised as the invalidation of proceedings. Because articles 438 of Civil Procedure and 230 of

experimental Code of Procedure had predicted the phrase (The trial court would be null and void and the plaintiff would have to implead again), and because the phrase (null and void) was a source of controversy in court, this interpretation in the Civil Procedure Code act 1318 changed to (the invalidation of petition). (Article 269 the Old Civil Procedure Code) (Matin Dafteri, Ahmad 2002)

The other one was the matter of not pursuing the proceedings in article 296 of the Old Civil Procedure Code. According to this article: (If the first hearing at the request of the parties has been stayed and within one year from the date of arrest, has not been pursued, Petition is void and the plaintiff can pursue the lawsuit by suing again. Obviously, if the parties politically agreed with each other and asked the court to stay the proceedings, and the court subsequently suspended the hearing for one year and the parties, at the end of this time did not pursue the proceedings, this would confirm the fact that they do not wish to continue proceedings. Consequently, the petition would be invalidated and the proceedings would be deemed null and void. However, this policy of the legislator has changed in the reformations of 1942 and the result of this change in attitude of the legislator was to remove the invalidation of the petition legal system that would happen after not pursuing the proceedings. Because the new legislator does not consider the absence of the parties in the hearing an obstacle on the way of proceedings and forecloses the defendants' authority in asking the court, according to the article 165 of Old Civil Procedure Code, to invalidate the petition when the plaintiff is not present at the hearing. Article 165 has changed in this way that in case of the plaintiff being absent in the proceedings, if the court after getting the defendant's explanations fails to vote, can annul the petition and therefore the annulment of the petition will no longer depend on the defendant's will. In addition, paragraph 1 of Article 290 of the mentioned law that gave the authority of requesting the stay of the proceedings to the parties, has become abrogated and then no case has been remained for applying article 296.

The legislator had also predicted another case for not pursuing the lawsuit in article 512 of the former Civil Procedure Code. This article was about not pursuing the appeal lawsuit in Court of Appeals. According to this article, if the appellant without any excuse did not pursue his appeal lawsuit for three month, the court, in request of the appellee issued the invalidation of appeal lawsuit (Mohajeri, Ali, 2003).

Predicting the sanction for the invalidation of appeal lawsuit, despite the judgment that there was about not pursuing the lawsuit in primitive stage, was natural because the annulment of petition in primitive stage did not preclude relitigation. However, the petition of appeal is bound to a specific deadline and by the annulment of petition of appeal it was not possible to submit a petition again, therefore the result of the court should be in a way that invalidate the appeal lawsuit. This article despite abrogating the articles 167 and 168 of the former Civil Procedure Code in 1952, before the enacted law in 2000, was still valid and this reflects the legislator's politic dichotomy for the presence of the parties during the proceedings and its pursuit. In the new Civil Procedure Code, such a verdict is not predicted, so this incident was removed from the meanings of the incidents causing the decline of proceedings. These changes are made in order to mitigate the effect of the will of the parties on the proceedings and the result was the removal of some of the incidents causing the decline of proceedings and creating new incidents. However, in some of the rules, the issue of not pursuing the lawsuit is still valid and can be regarded as the basis of the work in court. (Articles 18 repeated, 44, and 45 of Registration Act:

- Article 18 repeated of Registration Act: In case of the death of the protester to registration, whether before or after the execution of this law, whenever the one who is the object of protest cannot introduce all or some of inheritance, his request would be worked on as following:

- In the first case, the court shall communicate to the local prosecutor that in case of the existence of insolvent heir proceed to appoint guardian and pursue the proceedings. In addition, three times consecutively, publish an announcement about the subject of lawsuit on one of the most widely circulated newspapers in the center and one of the local newspapers or the one near the seat of the Court. If within ninety days from the date of publication of the last announcement the lawsuit is not pursued, it must be issued as invalid. The impartment of the mentioned rule would be published as an announcement for one time in one of the local newspapers or the one near the seat of the Court and if within the prescribed period after the issuance of the rule they do not appeal, the mentioned rule is determined and enforceable.

After removal of the regulation related to the annulment of the petition because of not pursuing the proceedings, another change established in incidents causing the declined of the proceedings. In the 1955 reforms, legislator predicted the incidents that may lead to the annulment of petition; such as the articles 123, 165 and 166 of Civil Procedure Code that in these cases, with the realization of the circumstances, the court would issue the annulment of the petition and in this way, the proceedings would be declined. Article 123 of Civil Procedure Code reformative 1955, would allow the plaintiff to withdraw his petition in the stage of exchange of pleadings at normal proceedings so that in case the court would annul the petition. In this law there is no word about withdrawal of petition in summary proceedings but the judicial precedent relying on the article 151 and 342 of the former Civil Procedure Code, allow the plaintiff to withdraw the petition in the first session of the proceedings. In paragraph A of

the article 107 of the new Civil Procedure Code, the withdrawal of the petition is being predicted and is bound to the section (the first session of the proceedings).

About the withdrawal of the lawsuit before and after the end of the parties' negotiations and waiving the lawsuit, during the legislation except for some changes in some phrases, no certain change is made (Mohajeri, Ali, 2003).

Discerning the decline of the proceedings from the similar cases

We have already noted that the proceedings will begin with submitting a petition and the petition is qualified only if is submitted completely. Therefore, not meeting the deadline in removing the defects of the petition that according to the article 54 of Civil Procedure Code by the Director of the Office, led to the issuance of the withdrawal of petition cannot be considered as one of the incidents declining the proceedings. Because before removing the defect of the petition, the proceeding is not formally started so cannot be declined. In addition, the proceeding should not be completed and terminated; the termination of the proceedings would be established by the issuance of the court verdict.

Therefore, the incidents that occur after the issuance of the verdict and before the start of the proceedings in another stage or during execution cannot be regarded as the antitype of the incidents declining the proceedings. For example, in article 173 of the former Civil Procedure Code not pursuing the executive order has been predicted. Thus, if the executives that were issued for the sentences in absentia were not pursued until one year from the date of the issuance, would be invalid and the plaintiff had to bring a claim again. Therefore, such incidents because of being out of the proceedings cannot be considered as incidents of proceedings and shall be separated from them. However, currently such provision has no basis.

Analysis of the cases of the stay of proceeding

Death of the parties

According to the article 956 of Civil Code: the capacity of having the right, starts with birth of the person and ends with his death. Therefore, death is the end of the capacity and personality of the human, which in case of occurrence, the man loses his ability to contain the rights and duties and whatever is remained of his property, rights and liabilities would be transferred to heirs. Thus, from the date of death, anyone who has had a claim on the deceased person or has brought a claim in judicial court must pursue it on the heirs. Death of the parties is conceivable in three cases: first death of the defendant in the time of submitting the petition, second the death after submitting the defective petition and before removing the defects and third death of one of the parties during the proceedings. (Shams, Abdullah, 2005)

Death of the parties during the proceedings

In case one of the parties dies during the proceedings, what will the court decide would depend on the right type of the origin of the claim. The reason is that, because of the relationship between the right and the claim, features and characteristics of the right would be extended to claim. The verdict differs depending on the fact that the right is relevant to the character of the entitled and is non-transferable or the right is not related to the entitled and after his death transfers to his heirs. Therefore, we separately study the death of the parties in each of these assumptions (Hayati, Aliabas, 2005):

A- If the right is among the ones that is related to the character of the entitled, in case of his death the right would be declined and contrary to the rights and financial obligations of the deceased it cannot be transferred to the heirs. In addition, the lawsuit will not be transferred to the heirs too and because the continuation of the proceedings by introducing the heirs of the deceased is not possible, there is no reason for the stay of the proceedings and the court must take a decision that leads to the decline of the proceedings. The same verdict would occur if one of the parties dies before removing the defects of the petition and because the original lawsuit is declined, stay of the proceedings for removing the defects would be meaningless. For example, in a claim that a plaintiff brings on a painter because of not painting what was intended, by death of the painter before removing the defects or during the proceedings, the commitment would be invalid, therefore the lawsuit on obligation to fulfill the commitment would become invalid and the court must issue the invalidation of the lawsuit.

B- If the lawsuit is not related the character of the deceased and is transferable to heirs, with the death of any of the parties, the lawsuit would not get invalid but with the other rights and duties of the deceased person would transfer to the heirs and the heirs would pursue the proceedings on behalf of deceased. Thus, the Court pursuant to article 105 would stay the proceedings in order to determine the heirs of the deceased so that after determination of the heirs, they would pursue the proceeding.

It should be noted that the death of the parties during the transferable lawsuits does not always lead to the stay of the proceedings, but this event (death) may lead to the decline of the lawsuit and proceedings. For example, in the case of an obligation to pay a debt that a father brings against his child, in case the father dies during the proceedings, the defendant by transferring the properties and assets of the deceased would become his deputy. And according to Article 300 of the Civil Code he would own all those properties and assets and if the owner is the sole heir would own all those properties and assets and consequently his commitment would become totally invalid (Katoozian, Naser, 1997). Therefore, with the decline of the commitment, (right) the case would also decline and the court instead of issuing the stay of the proceedings, must issue the invalidation of the lawsuit. However, if the defendant were one of the heirs, the mentioned debt in respect of the inheritance of the defendant would be invalidating. Thus, the court in respect of the share of the defendant from the lawsuit must issue the invalidation of the lawsuit and stay the proceedings in respect of the other heirs' inheritance. Therefore, the death of the parties during the proceedings would disturb the proceedings. This disturbance is sometimes in the form of staying of the proceedings and sometimes in the form of declining the proceedings and the lawsuit.

The court, after getting informed about the death of the parties, would stay the proceedings only if the death of the parties is confirmed. This may be achieved by the report of the communicant or someone who announces the death to the court provides some reasons to prove it in which case the proceedings will stay. This case is not predicted in the Civil Procedure Code this may be because of being evident; because otherwise it may be a pretext for the opposite party of the lawsuit to deceive the court and prolong the proceedings.

Issuing the verdict of the presumptive death decree

Article 1011 of Civil Code: the missing absent is the one that a relatively long period have been passed from his absence and there is no news about him. It is noted that according to this article the missing person is not deemed as an insolvent and did not lose the possession of his property. So in this respect has the legal capacity and pursuit of the lawsuit on behalf of another person is not possible. Therefore, the grounds for the stay of the proceedings are not provided. However, it seems that this is contrary to the rights of defendant and correspondence principle; because it is not fair to litigate or pursue the lawsuit against the person who by no means is not known where he is and is not able to defend him. However, for the rule laid down in Article 105 of Civil Procedure Code is an exception and cannot be extended to other cases, as a result, we cannot use the mentioned article for the staying of the proceedings in respect of each of the parties' absence unless the legislator has explicitly predicted such a thing in future. It seems that prediction of such sentence is necessary. Article 1012 of Civil Code (If the missing absentee has not appointed anyone to manage his property and there be no one who is legally entitled to have the right to get in charge of his property, the court specifies a trustee to manage the property. The request for the specification of a trustee would only be accepted from the public prosecutor and beneficiaries). If the missing person had appointed an agent to manage his property or according to article 1012 of Civil Code, the court by the request of public prosecutor or beneficiaries, appoints a person as a trustee to manage his property, in this case, we can say that the trustee appointed by the court, in order to manage the missing absentee's property, can pursue the financial claims that are for or against him. The reason is that agent or trustee is responsible for maintenance and management of the missing absentee's property. Also according to article 1015 of the mentioned law, the responsibilities of the trustee that are specified based on the article 1012 of the Civil Code, are the same as guardian's responsibilities. One of those responsibilities is to bring a claim against the third party in order to protect the rights of the insolvent or to take part in the brought claims and pursue them on behalf of the minor.

Absence of one of the parties leads to stay of the proceedings only if taking all the conditions prescribed in Articles 1019 to 1023 of Civil Code together the absentee's presumption of death decree is issued. In this case, according to the fact that the word (death) that is stipulated in Article 105 of Civil Procedure Code is considered as absolute, in addition to natural death, includes presumed death. In addition, given that the effect of the presumption of death decree regarding transfer of assets to heirs is similar to natural death, the heirs become the deputy of the (hypothetical) deceased; as a result, the claims should be brought against them or be pursued by them. Therefore, in case of issuing the presumption of the death decree, the court must, based on the article 105 Civil Procedure Code, stay the proceedings until the heirs are determined (Shams, Abdullah, 2010).

Insolvency of the parties

As lexicographer jurists have expressed, insolvency means Prevention and Prohibition of work. The legal meaning of insolvency must be discussed according to Civil Code. Because the Civil Procedure Code is silent on this issue, so we would have to refer to articles after article 1207 of the Civil Code. Insolvency in Civil Code, contrary to the jurists idea who believe it has seven to eight types, has three types of insanity, stupidity and minority that will be talked about in the next discussions.

Supportive insolvency

Another incident that leads to the stay of the proceedings and is stated in article 105 of Civil Procedure Code, is the insolvency of one of the parties. Before stating the insolvency, we must talk about competence, which is opposite of the insolvency.

Competence is the legal ability of a person to possess or do right. Legal ability to possess right is called enjoyment competence or the competence to possess right or possession and the legal ability to do the right is called vindication competence or competence to do the right or tenure. According to article 1207 of the Civil Code, following persons are insolvent and are prohibited from seizing their property and financial rights. 1) Minors, 2) Immature people, 3) Insane ones.

The minors, indiscerning minors and the insane ones are totally prohibited from seizing in financial and non-financial issues. Whether it is related to their own or they wish to intervene as an agent for others. But insolvency about immature people does not include all affairs; but since the immature does not act rationally in his property and financial rights, thus, their insolvency is limited to financial affairs and they are competent in non-financial affairs and can personally do anything without the intervention of a guardian. In this verdict, discerning minor is the same as stupid.

Bringing a claim and pursuing it are the best examples of doing right and as we said, in order to do the right one must have competence. The one who brings a claim or is the party who is sued or tries to defend, cannot be minor or insane and must be mature in case of financial claims. However, in non-financial claims is not necessary to be mature and only if the person is into puberty and is sane, would be competent to bring a claim or pursue it. The occurrence of insolvency for parties is conceivable in two sections. First, these obstacles (minority, insanity and immaturity) must exist at the time of submitting petition that the verdict in the case of each of the parties is different.

If the plaintiff, at the time of submitting petition, lacks legal competence (paragraph 3 of article 84) basically, the proceeding is incorrect and invalid because of failure to observe basic conditions. Therefore, the court in order to comply with Article 89 of the aforementioned law, issue the rejection of the claim and declare the invalidity of the plaintiff's action. The conditions for bringing a claim that are mentioned in article 84 of Civil Procedure Code, are essential and go among *jus cogens*. Therefore, it is not possible to exceed it, although the mentioned article considers these conditions as the objections that the defendant must object them until the end of the first session of the proceedings. Because these objections are among the general objections, the defendant's objection is merely a notification and the court immediately after getting informed, shall even without the defendant's objection, issue for the rejection of the claim.

In addition, it is possible that during the proceedings, one of the parties become stupid, in this case if the claim is of financial affairs, the court must stay the proceedings. However, if the claim is non-financial, and one of the parties loses the state of being mature, because in non-financial claim maturity is not one of the conditions of pursuing the claim, therefore, has no effect on the process of proceedings and the court cannot stay the proceeding. However, if the claim is a non-financial one but has financial burden for the immature person, it seems that in this case the verdict, which is issued for the immature person in non-financial affairs, can also be issued in this case. Because the court's verdict has effect on the person's properties and assets and the person's action is considered as acquisition of assets that are out of his authority, consequently, the verdict that is issued for the immature person in financial affairs can also be issued in this case. Imagine that, a divorce case is brought in court and during the proceedings, one of the parties gets stupid. It is true that the mere divorce proceedings is among non-financial claims that the stupid person has legal competency toward that, but in a divorce case issues such as dowry and remuneration arise. The continuation of the proceedings by the stupid means the acquisition of property, that the stupid is not allowed to do it. As a result, the proceedings should be stayed (cut) until his guardian is specified and introduced to the court.

Care insolvency (bankruptcy of one of the parties)

We have already said that the general verdict and principle of stay (cut) of the proceedings has been stated in article 105 of Civil Procedure Code and its examples are restricted to death, insolvency and decline of the position of one of the parties. In addition, no other article in the Civil Procedure Code causes the stay of the proceedings. The verdict of stay of the proceedings is an exceptional case and is not applicable to similar cases unless a certain law authorizes this. The bankruptcy of one of the parties is one of the things that create doubts in this regard, which means that the occurrence of bankruptcy proceedings will affect the proceedings or no. What first comes to mind is that the bankruptcy can be regarded as one of the examples mentioned in article 105, which is insolvency, and therefore we can include it in the verdict of stay of the proceedings. Of course, it must be said, this seems unlikely because the causes and examples of insolvency are stated in articles 211 and 1207 of the Civil Code. (Article 211 of Civil Code: parties in order to be considered as competent, must be grown up, wise and mature). According to these

articles, insolvent is the one who is minor, insane or immature, while by the issuance of the bankruptcy verdict none of the above conditions is attributable to the merchant.

Of course, having the competence to possess and pursue the claim is not sufficient, but since bringing a claim is one of the best examples of seizing property, the person must also have the authority and ability to seize property. Legislator in paragraph 3 of Article 84 of Civil Procedure Code considers the legal competency as one of the conditions to pursue the claim and mentions that in order to fulfill the legal competency two conditions are necessary, competency and authority to seize possession. Thus, a person who lacks legal capacity will not have the right to pursue the claim. In this regard, Article 419 of Commercial Code mentions “from the date of adjudication”, therefore from the date of adjudication until the bankruptcy has not been resolved the merchant does not have right to intervene in the financial and non-financial actions that directly led to the seizure of his property. Moreover, according to Article 419 of the mentioned law, the administrator must intervene in the claim on behalf of the bankrupt.

In case one of the parties in the proceedings in bankrupted, regarding the fact that the bankrupted person loses the competency to pursue the claim, according to article 419 of Commercial Code the administrator shall, on behalf of him pursue the proceedings. (Article 419 of Commercial Code: from the date of adjudication if anyone has any movable and immovable claim against the bankrupted merchant, must bring the claim against the administrator. All executive actions shall be subject to the command.

“In case the defendant is bankrupted during the proceedings, the court would not be able to continue the proceedings. Because the previously mentioned claim must first be reviewed by the administration and if it has been determined, the defendant would get his demand from remaining assets of the bankrupt, that in this case if the determined demand is paid from the bankrupt assets, continuation of the proceedings would not be necessary”.

Therefore, specifying an agent for the bankrupt person, presenting to the court, and considering the plaintiff's demand by the administration requires the stay of the proceedings. As a result, although there is no explicit verdict in law about stay of the proceedings in bankruptcy, but since articles 418, 419 of Commercial Code and 35, 36 of Civil Procedure Code are still valid and execution of these articles requires stay of the proceedings, consequently, they can be basis of staying the proceedings.

Decline of the position

The concept of decline of the position

Another incident that may occur during the proceedings is that the position of each of the parties by which they have entered the proceedings, may decline. In the Civil Procedure Code, no specific definition is provided for the term (position). That is why the experts disagree on the definition of the position; (position, is a title that the plaintiff or defendant, with that title enters to a claim or becomes a party in transactions). With this definition, position includes all the people who bring a claim whether original or on behalf of someone else like guardian, attorney and executor. (Position is a legal title that allows the person to ask the court to consider something of bring a claim that is not related to him).

According to this definition, position has specific meaning that is limited to the cases that the claim is brought on behalf (conventional, legal or judicial) of the original person.

Regardless of the different viewpoints, which exist in providing the concept of the position, decline of the position means the loss of the title, by which the person was allowed to intervene in the proceedings. Title declines when it does not have originality. In other words, its existence and survival depends on the will of another or the law. For example, attorney and guardianship are titles by which people are authorized to bring or pursue the lawsuit, but these titles are not permanent and their survival depend on continuity of client satisfaction or not to depose by the court also the continuity of the agent's competency.

Thus, position in the expression (the decline of the position) must be applied to the cases in which someone on behalf of another one brings or pursue a lawsuit.

Causes of the decline of position

There are different causes for the decline of the position of people who are agent to intervene in proceedings on behalf of the original person. For example, if the agent were a lawyer, his position would decline by death, resignation, deposition, insolvency, being banned or suspended from attorney ship, and if the presence of the agent is because of the insolvency of the parties, removal of the causes of insolvency would result in decline of the position of the agent. For example, during the proceedings a minor party reaches puberty and becomes major or the original person who was insane, stupid or bankrupt and has appointed an agent for the proceedings, during the proceedings, becomes mature or gets improvement in health or the state of bankruptcy is ruled out so that, the agent's position will be declined (Zera'at, Abas, 2007).

Sometimes the agent's decline of position is not due to the removal of the causes of insolvency, but according to court, the agent loses the competency to of being representative, this way the court besides dismissing the agent, determines his deputy. Another alternative is that the representative (legislative or judicial) gets insane or dies that in this case because the agent loses his competency, his position declines.

The effects of stay of proceedings

When during the proceedings one of the parties or their representative involve in incidents of the stay of the proceedings and because the incident causes him to lose the power and ability to defend the claim, the proceedings cannot be continued and must be temporarily stayed until his deputy enters into the proceedings. However, the mere occurrence of this incident cannot stay the proceedings on its own, but it requires the court to verify the occurrence of incident and by taking an appropriate decision declare the stay of the proceedings.

According to the principle of finality of judgments of courts and because in the Civil Procedure Code the capability of objecting on this issue is not predicted, thus, no objection is possible. Moreover, the courts do not regard it as petition and do not impart it to the parties and merely impart it to the opposite party in order to remove the obstacles.

Study the dependency of the decline and stay of the main proceedings to the incidental claims

Because of the relationship between the main and incidental claim, these claims have mutual effects on each other that because of the importance of the issue, the most important effects of the incidental issues of the main lawsuit including decline of the lawsuit and proceedings and stay of the proceedings will be discussed in here. The court, which is going to hear the main lawsuit, in face with an incidental lawsuit, in case of having inherent jurisdiction to hear the case, is obliged to accept the deal, although does not have local jurisdiction to hear the incidental lawsuit. In fact, bringing the incidental lawsuit as mentioned before causes deviations from the rule of relative competence. According to article 17 of Civil Procedure Code, any lawsuit that is brought during hearing another lawsuit by the plaintiff or defendant or the third party or by the original parties, is called the incidental lawsuit. This lawsuit in case of being related to the main lawsuit will be heard in the same court as the main lawsuit. However, if the court, which is hearing the main lawsuit, has no inherent jurisdiction to hear the incidental lawsuit, must avoid from dealing with the issue of disqualification, refer the case to the competent authority. (Article 27 of Civil Procedure Code: If the Court does not consider itself competent, with the issue of disqualification, refer the case to the competent court. Then the court is obliged to out of turn state about the competence and if it refuses the claim on not being competent, in order to resolve the dispute sends the case to Court of Appeals of province. The verdict of the court of appeal in determining the competence must be obeyed). Thus, the plaintiff by bringing the main lawsuit provides the ground for the incidental lawsuit. In case this lawsuit has the same root as the main lawsuit of has a complete relationship with it, would link with the original lawsuit and be proceeded together. This is for preventing the issuance of opponent votes and saving money and time for the parties and the court. The importance of this issue is so much that in some cases even the court, which is going to hear the lawsuit may have no local competence to proceed the lawsuit.

One problem in this regard is that the link between the main claim and the incidental one is up to what extent. Does this link, make their fate to be one; is this true that that with the withdrawal of the petition or main lawsuit or with the stay of the main lawsuit, the incidental lawsuit would also be declined or stayed or regarding this matter, they have no relationship with each other?

In order to reply the above questions, we must separate different incidental lawsuits; therefore, in the following, we will study this issue under two titles. In the following, we will talk about the impact of the decline and stay of the main hearing on the brought lawsuits during the first lawsuit proceeding:

Counterclaim

As a rule, decline of the main lawsuit would not lead to the decline of the counterclaim and additional claim. The converse is also true. In other words, decline of these lawsuits does not have any effect on the main lawsuit, because the link between the main and the aforementioned lawsuits is not permanent. For example, when a man brings a submission claim against the woman and the woman who has not obeyed her husband yet, counterclaims against her husband in order to get dowry. If during the hearing one of the parties die, although the original submission case is annulled, proceedings will continue on counterclaim demanding dowry, but of course, in compliance with Article 105 of Civil Procedure Code and after the introduction of the heirs.

However, sometimes the precedent on this issue did not have enough accuracy and with general statements on such assumptions, declared that the incidental lawsuits cannot be proceeded.

Obviously, this view is not correct, because the original and incidental lawsuits are not in all respects depending on each other so that the decline of one of them does not lead to the decline of the other one. Incidental lawsuit is a full-scale one that generally meets all the formalities of proceedings.

Counterclaim establishes a link with the original lawsuit that joins their fate together. However, this correlation is existed when it is necessary to hear both cases at the same time. In fact, the independence of the lawsuits will be disregarded only to avoid issuance of contradictory rules.

If the decline of the right were due to the will of the plaintiff, depending on the right being objective or religious, it would be invalidated or disclaimed. It is also possible that by annulment of the transaction by the plaintiff, the right that has risen because of the contract be invalidated.

Disclamation or invalidation of the right by the plaintiff, although the cause the disclamation of right and consequently, invalidation of the main lawsuit, but can have no effect on the counterclaim, because the will of the plaintiff is only effective in his own right and cannot work to the detriment of others. However, as pointed out above, this reasoning is assumed if the counterclaim is independent from the main lawsuit. On this assumption, the Counterclaim seeker has right to ask for contingency of his lawsuit and the court according to article 3 of Civil Procedure Code will be required to continue the proceedings. However, if the right that has been risen from transaction, become invalidated by the plaintiff, because the source of the right is declined, the counterclaim that is brought as a result of the link between the source and the main lawsuit, would also be declined. It is worth mentioning that according to article 399 of Civil Procedure that says in achate contract people may put a condition that in a certain time for a specific vendor or client, or both, or another person, there is authority to terminate the transaction, in option of condition, a third party may also terminate the transaction. In this case, the right would be declined by the third party's will that in terms of our discussion is not different from terminating the transaction by plaintiff.

Decline of the right by the defendant's will includes fulfillment of the obligation or commitment. We assume, the parties will be paid out of the settlement because in compromise, the will of the parties is involved.

Additional claim

What mentioned before is also true about additional claim that in order to avoid prolongation some examples will suffice. For example if you bring a claim for the expropriation of certain registration plates and in the first session of the proceedings, you as the plaintiff realize that in addition to expropriation can bring another claim on demanding remuneration for the period of time that the property has been tenured. However, if after proceeding the first lawsuit that was about the expropriation, the court did not recognize the defendant as usurper or that the lawsuit did not relate to the defendant, thus, after issuing the verdict on the plaintiff not having right in the expropriation claim, consequently, additional claim on demanding remuneration will also be declined. However, in the stay of the proceedings in any reason including insolvency, death of decline of the position, undoubtedly, the additional claim will also be stayed because the parties of the two claims are one. Nevertheless, this stay happens where the lawsuit is transferable to heirs or other representative, because in the example above, if the husband dies divorce lawsuit generally declines and the additional claim on demanding the dowry will be stayed and depends on the introduction of the heirs of the plaintiff.

Stay of the proceedings in certain cases

Stay of the proceedings and third party's objection

A third object is one of the extraordinary ways of objecting the judgments and orders of the Court. This method, contrary to the appeal, is appertained to the people who themselves or their representative did not intervene at the hearing (the one that has lead to the issuance of a verdict) and sustain a loss from the issued verdict. Third objection in some cases can lead to stay of the proceedings and suspend it; so in what follows, we will analyze the third objection and its effects.

Types of third objection

Types of third objection include:

- A. The main objection, the objection raised by the third party.
- B. Incidental objection, an objection that one of the parties raises on the verdict that has been formerly issued in a court and the other party, to prove their claims during the proceedings would rely on it. The difference between these two types is that the main objection must be with submission of the petition while the incidental objection is not like this. Also, the main objection petition will be given to the court, which has issued the verdict but the incidental lawsuit will be given to the court that the lawsuit is brought there (articles 420 and 421 of Civil Procedure Code).

The legal basis for the third objection

This objection is an exception to the principle of relativity of court's rulings, the rules that are issued by the courts, are legal towards the parties and their legal deputy and has no effect on the third parties who have not participated in proceedings. For example, someone leaves his garden (that has not been registered and has no official title deed), goes abroad, and someone else in his absence seizes the garden. Then a third party brings the garden out of the first possessor's hand, the first possessor brings a claim against the second possessor. The court would issue in favor of one of the two. After a while, the original owner arrives from the travel and gets aware of what has happened, submits a petition and objects the issued verdict.

Conditions of the third objection

These conditions are as follows:

- A. a verdict or warrant is issued
- B. the third party is damaged by the verdict or warrant
- C. Third party is not involved in case as the original or representative.

If someone, as the representative of one of the parties, have previously intervened in proceedings, the verdict has been issued against him, and then the subject of lawsuit is released to him, the mentioned person cannot because of the change of the position to a third title, object it.

The following verdicts and orders can be objected:

1. All verdicts and orders of the Public and Revolutionary Courts and court of Appeal, provided that they are violating the rights of a third party
2. judicial arbitrator's verdict
3. The decision of the court in non-litigious matters (Article 44 of the Law on non-litigious matters).

Third objection deadline

According to Article 422 of the Civil Procedure Code can be said that the third objection deadline is in one of the following dates:

- A. Before the execution
- B. After the execution, provided that it is proven the rights, which are the basis of the objection are not invalidated in any legal way

The effects of objection

Objection literally means to criticize, appose and protest (Amid, Hasan, 2005). Third party's objection in legal terms is considered as an extraordinary way to complain of the verdicts. In cases that in a lawsuit a verdict or an order is issued and it caused to sustain a loss to the third party's right, the third party has right to object it (Matindaftari, Ahmad, 2002).

After considering the third objection one of the following two situations may occur:

- A. According to court the third object is not permissible, in this case the objected verdict would keep its legal validity and the winning party can demand the proceedings' recompense from the third objector.
- B. The court considers the third objection and regard it as permissible and if had issued a verdict before, would backtrack the previous verdict and if it is the higher authority, would cancel it and issue the correct verdict. If any part of the objected verdict would cause to sustain a loss to the objector's benefits, the court would terminate it and the rest would remain as it was, but if the context of the verdict were inseparable, the court would terminate the whole verdict.

It is noteworthy that the third objection does not result in the delay of execution. However, in cases where compensation for losses resulting from the execution is not possible, the court after quia timet of the third party, issues the delay order in the execution of the verdict, which is called the third objection suspended effect.

Third party's objection has some effects that will be discussed in this study:

Suspend or delay of the execution (stay of the proceedings)

- A) Delay in execution

Because the third opposing party is not involved in the proceedings, the issued verdict has caused a disruption of his rights. Legislator in order to preserve his rights, which have been violated, has allowed such person to object the verdict. Obviously, according to this fact, it is logical to postpone that the execution on the party against whom a protest is made and after considering the third party's objection and probably his righteousness, getting his rights on the execution of the verdict is not impossible. Therefore, the most important effect of the third party's objection is the delay and suspense in execution of verdict for the party against whom a protest is made. This delay in execution

is not unconditional. Nevertheless, depends on two conditions, which the legislature has provided two conditions in Article 424 of the Civil Procedure Code:

First condition: proving the lack of compensation of losses resulting from the possible execution;

Second condition: quia timet of the objector;

According to the provisions related to quia timet, the court will order to delay the execution for a certain time on the party against whom a protest is made.

However, specifying the inserted cases in article 424 of the Civil Procedure Code, in other words, the risk and loss arising out of the execution, the amount of quia timet and the period of execution delay is of responsibilities of the court. So if the two mentioned conditions do not exist, execution on the party against whom a protest is made will not stop. Since the beginning of Article 424 of Civil Procedure Code states that "third party's objection does not lead postpone the conclusive execution." It is reasonable because extraordinary ways of complaining the verdicts, it is presumed that it has no effect on execution. Such as the case of appeal that exceptionally and in certain conditions lead to delay or suspense of the execution (Vahedi, Ghodratalah, 2000).

Therefore, quia timet, whether in financial or non-financial cases must be taken from the third objector and its amount has not been specified in our Civil Procedure Code. However, quia timet must be taken in a way that provides the ground for execution of the verdict that has been objected. In case of judgment debtor, the quia timet must provide the ground for execution of the verdict. However, the court may reject the request to delay the execution, in case it was possible to compensate the loss, which is caused by execution. If the delay of execution is issued, it will be for a period of time and it is permitted to renew it until the final result of the objection is clear (Shams, Abdollah, 2010).

B) suspended effect of the incidental third party's objection

Third party's objection is called main or incidental when the verdict or order of the party against whom a protest is made, be presented relied on and during the proceeding which is brought by one of the parties and against the other. If the third objection, has firstly been made by a third party will be called the main objection, and if one of the parties objects to the verdict that has been previously issued and the other party referred to it, will be called the incidental objection not main (Sadrzadeh Afshar, Seyed Mohsen, 2008).

In incidental third party's objection, whenever the court determined that the verdict, which is issued on the third party's objection will affect the main lawsuit, would postpone the issuance of the main lawsuit's verdict and wait for the result of the objection lawsuit. However, if the court does not get to that determination would precede the lawsuit and issue the verdict. In case that the court does not have competence to proceed or is in lower grade than the court that has issued the verdict of the party against whom a protest is made, according to Article 421 of the Civil Procedure Code, the objector should give petition to the court that has issued the verdict of the party against whom a protest is made (Vahedi, Ghodratalah, 2000). In this case, if the objector does not give petition within twenty days, the main lawsuit will be preceded and the court will issue the verdict (See Article 423 of the Civil Procedure Code).

Cancelling the verdict of the party against whom a protest is made

This is one of the effects of the issued verdict about the third party's objection. It means that if the court, which is proceeding the third party's objection (main or incidental), presume the objector's objection to be permissible, would break that part of the verdict that has been objected and will damage the interests. The rest of the sentence that would not harm the rights of third party would be left without change. However, if the context of the verdict were inseparable, the court would break all of it (Ahmadi, Nemat, 1996). In case the court that is proceeding the lawsuit, do not consider the objection of the objector to be permissible, the verdict of the party against whom a protest is made will remain inviolate. In addition, the defendants in the case will have right to demand compensation for proceedings from the third objector.

The effect of third party's objections to other persons

Objection of the third party, in some cases, may also affect other people. So if the sentence of the party against whom a protest is made is inseparable, annulment of all judgment, reasonably and in accordance with the proceeding's principles, requires that in case the number of judgment debtors are high, all of them be one of the parties and have right to defend themselves. Moreover, they must be able to use that verdict and rely on it. Therefore, in this, the third party's objection affects other people. In case the inseparable verdict, be annulled by the court and the court back track it, other judgment debtors can use this back tracked verdict and rely on it. In this case, the court, in addition to a third party, will extend to other persons. (Shams, Abdollah, 2010).

Transition effect

Third party's objection has Transition effect. This property is limited. Whenever the third party criticizes and objects a verdict, considering its topical aspect and its verdict related aspect, given the parties' evidence will again be proceeded.

Depending (Inateh) order as the cause of the stay of proceedings

Lexical meaning of (Inateh) is "to make dependant". Idiomatically it means staying the proceedings and the statement of one court about vindicating another case in another court. Some other lawyers defined "depending" as: "If the prosecution of criminal cases or criminal court proceedings depend on the issues that making final decision and commenting about them, is out of the jurisdiction of the institution or criminal court. In this case, the latter authorities must stay the proceedings until the issuance of depending rule and relegate its prosecution on the final comment of the competent authority." However, the common point of all those definitions is that when proceedings in a specific authority depend on the one subject becoming clear that is out of the competence and jurisdiction of that authority, judicial proceedings should issue the order of "depending" until the claim is obtained.

"Depending" and its types

It is almost universally accepted in our judicial procedures that issuance of the depending order, is possible only by Criminal Justice Authority. However, as we shall see in the following legal authorities in some cases are required to issue the depending order.

By studying the legal regulations and issued verdicts of the Supreme Judicial authorities, "depending" can be divided on the following types:

Depending a criminal matters to legal matter

If proceedings of the criminal matter in competent criminal authorities depends on determination of an issue that its proceedings is outside the jurisdiction of the criminal authorities and is in competency of legal authorities, criminal authority is required to issue depending order. The legislator in article 13 of Civil Procedure Code provides that: "whenever during the proceedings come up that taking a decision depends on something that is in competency of another court, the depending order would be issued and announced to the parties".

The legislator's wording is general. The phrase "an issue that its proceedings are in competency of another court," general enough that undoubtedly can confuse the judicial authority in issuing depending order. The accused can by bring different claims and cases that their proceedings are outside of the competence of authority that is in charge of dealing with criminal complaint. In this regard, the Supreme Court in verdict No. 529 dated 08.02.68 of the General Assembly issued a verdict that somewhat limits the scope issuing the depending order. According to the written verdict: "according to article 17 of the former Criminal Procedure Code, the proof of the defendant's guilt, depends on the issues that their proof is of responsibilities of law courts, which are in charge of dealing with disputes on the right of ownership of immovable property and does not apply in the case of movable property ."

Judicial procedures, has gone even so far that believes in respect of immovable property, not every claim can cause the issuance of depending order. "The possibility of depending order of criminal issue to legal proceedings is inferior to the possibility of bringing legal claim in the competent courts. By the issuance of title deeds and registering the property in office by boarders that contain an aqueduct, that filling its wells has been the subject of criminal claim. Article 22 and 24 of the registration code explicitly states that there is no opportunity to bring the legal claim that the issues are depending on it and the law has blocked its way. Thus, issuing the depending order in this case is a violation. "(verdict No ... High Court Judges on ...)

In this regard, it should be stated that because in accordance with the provisions of the Registration Code and particularly article 22 of this law, as soon as the name of the person is listed in the title deed, the government consider him as the owner. Therefore, if a plaintiff brings a claim about malversation given that the accused person misused the private relationship between the plaintiff and himself and although it was agreed that after registering the property in his name, e is supposed to use it as the plaintiff wishes, but he had refused it in proceeding the plaintiff's claim on malversation. It is not possible to issue the depending order just because of dispute between the plaintiff and defendant on owning a property. Because according to the registration Code, the owner is someone whose name is listed in the title deeds and in this regard, the ownership of the accused person based on the registered credible records is valid, and until the issuance of the final decision of the court, the plaintiff's claim should be proceeded.

According to what said before, it has been specified that the most cases that provide possibility of issuing depending order is dispute in ownership but issuing the depending order is not limited to this. About the parity relationship, many cases can be seen that obliges the judicial authority to issue depending. If the parity relationship

for mentioned reasons is not proved for the criminal authority, if the guilt or innocence of the accused depends on obtaining parity, the judicial authority is obliged to issue depending order.

In short, we can say that the conditions from issuing depending from criminal to legal issue, is as follows:

- A. Complaints raised by the plaintiff.
- B. When the dispute between the plaintiff and defendant is related to immovable property not movable one.
- C. The dispute between the plaintiff and the defendant is not related to any immovable property, the issue will vary depending on the subject.

Depending a criminal issue on another criminal issue

Depending on this case is issued when the issue raised in criminal authority, depend on specification of another issue that its proceeding is in competence of another criminal. It does not make any difference that whether this authority or another one, is the one dealing with the complaint. Article 13 of the Criminal Procedure Code, in phrase "or continuing proceedings in the same court require complying with other procedures and the depending order will be issued and" is related to this issue of depending order. The best example that you can bring for depending a criminal issue to a justice one when a defendant is being prosecuted for dishonored cheque, but claims that the cheque is being forged by the plaintiff or someone else. He says that another case on this issue is being proceeded in another Criminal authority. The defendant's delinquency of the accused person depends on obtaining if the signature under the cheque is original or no. The criminal authority is responsible for issuing the depending order for the case of dishonored cheque that after considering the accusation of forgery about the signature on the cheque, will decide about the delinquency of the accused person in the case of dishonored cheque. If the accused person's signature is proved to be original, he will be guilty in the case of dishonored cheque but if the forgery of the signature be proved he will acquitted in the case of dishonored cheque. It should be noted that depending a criminal issue to another criminal issue is in the minority in precedents of judged of the Courts of Criminal.

Depending a legal issue on a criminal issue

It was said that the search of depending order should not be limited to criminal cases, however, the most common cases of issuing depending order can be found in criminal cases, but it does not prevent the issuance of depending order in other legal cases.

Legislators are aware of the Civil Procedure Code and predicted the issue in article 19 of the written law. "Whenever proceeding an issue depends on proving a claim that its proceeding is in competence of another court, proceeding the claim would be stayed until the competent authority decides on it".

Regardless of the matter that the legislator has only been predicted a case that it's proceeding is in competence of another court, but as some of the lawyers have spoken: there should be no difference between this case and the case in which proving such claim requires bringing a lawsuit and the court be competent in proceeding the claim. However, we should consider the depending of a legal issue on a criminal issue as the only case that another authority (criminal court) has right to proceed it. Nevertheless, by establishing the law of forming General and Revolutionary Courts and general jurisdiction of authorities in proceeding the legal and criminal issues can be said that: When proceeding a legal lawsuits depends on proving a criminal claim, the legal authority itself can also handle the criminal matter too but should issue depending order in legal issue. (Article 13 new Civil Procedure Code). An example that can be stated on depending a legal issue on a criminal one is that when the legal Court during the hearing of a claim, gets informed of forgery related to legal claim in another court that has lead to issuance of the verdict but has not been confirmed yet. In this case, we believe that the legal authority is obliged to issue the depending order in legal issue until the criminal authority issues the verdict.

Depending a legal issue on a legal issue

Other types that can be stated on depending order is when in order to proceed it, the competency of the legal authority should be rejected. Whether that legal authority, itself is going to proceed the claim or another legal authority. For example, the plaintiff has brought a petition demanding the dowry but the defendant claims that previously at another branch of the family court has brought a petition for annulment of marriage and the first court issued a verdict on terminating the marriage, but by the wife's objection, the case has been sent to the court of appeal. Because the approval or violation of the issued verdict at the first court is effective in annulment of the marriage, according to article 1101 of the Civil Code provides, "If the marriage, before the sexual intercourse is terminated, the woman does not have any right to get dowry". In our opinion, the Court that is dealing with the demand of dowry should issue depending order about the termination of marriage until the final verdict.

Competent authorities in issuing the depending order

About the competent authorities in issuing the depending order, as mentioned in the first debate, in addition to the criminal authorities, legal authorities can also issue depending order, but about the criminal authorities on depending order, several issues arise that it is necessary to explain a bit about them.

Issuing the depending order in public prosecutor's office

By issuance of the Law of forming Public and Revolutionary Courts, public prosecutor's office, as an institution of prosecution has come to our criminal system. Article 3 of the Act explains the duty of public prosecutor's office as follows: "The Public Prosecutor's Office is responsible for detecting crime, the prosecution of accused person, bringing a lawsuit on the divine right and maintaining public and Islamic law, execution and also handling probate matters, in accordance with the legal provisions. The management of the public prosecutor's office will be with public prosecutor and will have the required number of vice president, deputy district attorney, investigator and administrative organization".

The status of judicial authorities after issuing depending order and the ability to object depending order

The status of judicial authorities after issuing depending order

The Legislator in Civil Procedure Code of Public and Revolutionary Courts, in civil matters, has determined the status of judicial authorities (Civil and criminal) after issuing the depending orders that each of them will be explained as follows:

A) The status of Criminal authorities after the issuance of the depending order

According to Article 13 of the Criminal Procedure Code of Public a revolutionary courts, in criminal issues, If the court issues the depending order, is required to declare the issued order to the parties. The beneficiary shall pursue the issue in a competent court within one month and present its certificate to the court which is proceeding the issue or submit the required petition to the same court. Otherwise, the court will continue its proceeding and will take the appropriate decision. The Criminal Court cannot after issuing the depending order and presentation of certificate by the beneficiary, pursue an issue that previously has issued a depending order on it (Decree No. 9-4 Persian date July 1923 Supreme Court of Judges).

B) The status of legal authorities after the issuance of the order

According to Article 19 of new Civil Procedure Code, the depending order will be issued in cases that proving the claim of "depending" are in competence of another court. The plaintiff should, after the issuance of depending order within one month bring a claim in a competent court and submit it to the Office of the Court which is in charge of proceeding. The Court, which is in charge of proceeding after issuing the depending order, cannot until the expiry of the deadline of one month, proceed the brought claim. If the plaintiff within the deadline does not bring a claim in competent authorities, the court would reject the lawsuit. This will not prevent the re-claim by the plaintiff after the proof of the claim in competent court. If the plaintiff in the one-month deadline, which is written in Article 19 of Civil Procedure Code, bring a claim and present the certificate to the court that has issued the depending order, the court is obliged to issue stay of the proceedings and wait for the final verdict.

Stay of proceedings in restitution of proceedings

Restitution of proceedings means substantive review of a judged claim by the court that has issued the verdict. (Ansari, Masoud and Taheri, Mohammadali, 2005). This issue in some cases can lead to stay of the proceedings; the main purpose of the hearing is to preserve the rights and justice (Katoozian, Naser, 1997). Proceeding is a means of administration of justice and the judge like others is subject to error. In case because of proceedings a verdict is issued that contain errors, there is no question that must be proceeded again. (Mohajeri, ALI, 2007). Therefore, the restoration procedure is predicted in order to keep the verdicts off the errors. (Hayati, Aliabas, 2007).

Types of proceedings restoration

Restitution of proceedings regarding how it is brought is divided into two types.

A. According to article 432 of Civil Procedure Code, if the one who asks for the restitution of the proceeding, independently ask for it, this request is regarded as the main proceedings restitution. It means that in case no claim is being proceeded, but one of the parties of the previously issued verdict, requested for proceedings restitution, this will be the main proceedings restitution request that must be submitted to the competent court.

B. contrary to the main proceedings restitution is the incidental proceedings restitution that is mentioned in paragraph B of the same article. Incidental proceedings restitution is brought during the proceedings but the main proceedings restitution, no case is proceeding (Mohajeri Ali, 2008). After asking for the incidental proceedings restitution, its petition must be submitted to the Court's Office within three days. The court that has received the

petition of incidental proceedings restitution must send it to the court that has issued the verdict about the issue that has been requested in proceedings restitution. If the court consider the reasons of petition to be strong and determines that the verdict, which is issued about proceedings restitution, is effective in the main claim, will postpone the proceeding of the main claim until issuing the verdict about proceedings restitution and otherwise will continue the proceedings (Article 434 of Civil Procedure Code).

Proceedings restitution authorities and the way to deal with the petition of Proceedings restitution

The court after reviewing the petition of Proceedings restitution will write the minutes of the issue and in this way issue for the acceptance or rejection of the petition. If the admission of petition is issued, the court will issue the order to make an appointment for proceeding and imparting it with the second version of the petition to the opposite party and imparting the appointment time to the one that has requested. If the refusal is issued, it will be imparted to the parties. (Shams, Abdollah, 2006).

According to article 432 of Civil Procedure Code, the competent authority to proceed the petition of proceeding restitution is the court that has issued the final verdict. (Final verdict is the one that cannot be protested or reheard. Also the ones that are able to be reheard or protested but within the moratorium are considered to be final). Therefore, if the first court has made a final decision, that court is the competent authority to handle the request of proceedings restitution. In case of accepting this request according to the amendment to Article 435 of Civil Procedure Code, will proceed it substantively and issue the verdict. The verdict issued by this court, in accordance with the regulations, can be reheard. If the court of appeal had issued the final verdict this court would be the competent authority for restitution of proceedings. In case of acceptance of the petition for proceeding restitution would issue the verdict, which will be final and definite. (Mohajeri. Ali, 2008). If in time of requesting for proceedings petition, the two issued verdicts were from the same court, the petition of proceeding restitution will be submitted to the court that has issued the second verdict. (Shams, Abdollah, 2008)

If the demand for proceeding restitution is done by virtue of Article 18 of the law of forming public and revolutionary courts, the authority to receive the proceeding restitution petition will be as follows (Karimi, Abas, 2007).

- A) Applicants and objectors of final judgments of the first stage and appeal stage of each province should refer to the justice of the province.
- B) Applicants and objectors of final judgments of the Supreme Court and the branches of determination, in order to submit their papers should refer to the Attorney General.
- C) Applicants and objectors of final judgments of the Military court in order to submit their papers should refer to the Representatives of the judicial supervision of the same province, especially in a military court or to the Head of the military court in Tehran. (If people in paragraph A refer to the Attorney General and people in paragraph B refer to the Justice of the Province, the Secretariat, in order to protect the rights of protesters in submission of application during the deadline, is obliged to accept the requests of the objectors and send them to the relevant authority and inform the applicants so that in order to pursue their request, they can refer to that authority).

The effects of proceedings restitution

The suspended effect of (stay of the proceedings)

Having the ability to reconstitute the proceedings and even the mere request to reconstitute the proceedings does not stop the execution of the verdict, but after presenting the request for proceedings restitution and issuance of its acceptance, if the judgment debt is nonfinancial, the execution will be stopped. (Paragraph A of article 437 Civil Procedure Code). However, in case the judgment debt is financial and it were possible to get quia timet and potential compensation, at the discretion of the court, a quia timet will be gotten from the winning party and the execution will go on. (Paragraph B of article 437 of Civil Procedure Code).

It must be understood that execution will be stopped if the operation is in progress and the judgment debtor ask for the issuance of stay of the operations (Shams, Abdollah, 2010).

In discussing proceedings restitution, the suspended effect on the main proceedings happens if the proceedings restitution from the beginning has been asked as incidental (Article 434 if Civil Procedure Code). In other words, the verdict that has been issued about the proceedings restitution be effective in the main lawsuit, (that the incidental proceeding restitution is brought during that), will postpone the proceeding of the main lawsuit in part where the verdict about the proceeding restitution is effective on it (Shams, Abdollah, 2010).

Transition effect

Proceeding restitution, in case of being accepted, has Transition effect and the court must proceed again and issue the verdict on subject and sentence issues (Hayati, Aliabas, 2008).

The effect of proceeding restitution on other persons

According to articles 308, 359 and 404 of civil procedure Code, it must be said that the verdict that is issued in the stage of proceeding restitution, is only effective to the one who has requested the proceeding restitution and his opposite party. Unless the issued verdict is separable that in the case it will include the people who are affected by the proceeding restitution but has not requested it. (Shams, Abdollah, 2010).

Ability to retribute the proceedings and even just requesting for proceeding restitution does not prevent the execution. In case the order of accepting the request for proceeding restitution is issued, since by determination of the court, there are some signs on the verdict to be incorrect and its execution may cause damage to the one who has requested the proceeding restitution, so in those cases where it is impossible to compensate for the damage, the execution stops. According to article 437 of Civil Procedure Code, accepting the proceeding restitution leads to stop the execution unless the judgment debt is financial and the winning party gives an appropriate quia timet for the execution. However, the operation will be stopped in case it is on process but if it has been executed before, the court cannot take any decision about the restitution of operation until the issuance of the proceeding restitution verdict. It must be noted that in this case the court must not act independently but by the request of the plaintiff, the court would issue the verdict on stopping the execution.

After the stop of operations, until the result is clear, the proceeding restitution would be stopped unless the judgment debtor is financial and the winning party asks for its contingency that in this case by getting the quia timet, the operation will go on.

Conclusion

Probably the proceedings, after the start, because of some events are stopped. This is called stay of the proceedings; generally, the stay of proceedings can be divided into two main categories:

(A) Those arising out of the parties or their representatives and in articles 105 and 106 of Civil Procedure Code are predicted.

(B) Other items that are predicted in other articles of Civil Procedure Code.

According to article 105 of Civil Procedure Code, death of one of the parties will lead to stay of the proceedings, if the claim is removable. Otherwise, the proceeding is not stayed but declined. As an example, we can mention the death of the wife or husband in divorce or submission case. Death, insolvency, or a decline of position of one of the plaintiffs of the defendants in separable lawsuits will only lead to the stay of the proceedings. Contrary to the claims that are inseparable, it must be admitted that the death, insolvency, or decline of the position of each of the several plaintiffs of the defendants would lead to the stay of the proceedings to all of them. The positions mentioned in article 105 of Civil Procedure Code, are only related to guardianship, trusteeship or administration of minors, insane and immature and the administration office representing the bankrupt. Therefore, article 105 of Civil Procedure Code will not be appointed to observed attorney.

Detention or imprisonment of one of the parties or going to the government or the military mission or essential travel would not lead to the stay of proceedings but the court will give them enough time to appoint a lawyer (Article 106 of Civil Procedure Code). The stay of the proceeding must be announced by issuing the order of stay of proceedings and be registered in the case. This order is not required to be formed as petition because it is not able to be complained, therefore, it is not necessary to impart it. However, the other party must be informed by notification because the contingency of the proceedings requires that the other parties introduce a deputy or representative. Now, according to Article 105 of Civil Procedure Code, the death of one of the parties would lead to the stay of the proceedings in case the claim, which is being proceeded, is transferable. Otherwise, the proceeding is not stayed but declined. As an example, we can mention the death of a wife or husband in a claim of divorce or submission. On the other hand, the death, insolvency and decline of the position, would lead to stay of the proceedings in case the proceedings has been started and has not been reached to the state of issuing the verdict. . So if at the time when the cause of the stay of the proceedings is announced to the court, the proceedings has reached to the state of issuing the verdict, the court must issue the verdict, because the proceeding is not running so cannot be stayed. However, regardless of cases of staying the proceedings, which arise from the parties or their representatives' status, there are many other cases that we have analyzed them in Chapter III study and had stated that in some cases they can be analyzed under the title of stay of proceedings. They include the depending order (subject of Article 19 of Civil Procedure Code), third objection (subject of Article 423 of Civil Procedure Code) and restitution of proceedings (subject of Article 434 of Civil Procedure Code).

Proceeding incidents in not implementing court orders:

1. Failure to pay an expert in the appeal stage, article 259 of Civil Procedure Code
2. Failure to provide the means of implementation in the appeal stage, article 256 of Civil Procedure Code

3. Failure to pay the damages provided by the plaintiff , article 259 of Civil Procedure Code
4. Failure to pay the damages provided by the foreign plaintiff , article 147 of Civil Procedure Code
5. Stay of the proceedings because of referring the dispute to arbitration, article 491 of Civil Procedure Code
6. Stay of the proceedings because of objecting arbitrator's verdict, article 487 of Civil Procedure Code
7. Stay of the proceedings depending on proceeding the crime, or marriage, divorce, birth, article 478 of Civil Procedure Code

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