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Legal Conflict Resolution Councils in Iran: the conditions and stage of hearing

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A B S T R A C T

The primary mission of the conflict resolution councils is to resolute the conflicts of people through chieftainship and agreement that is been anticipated under the executive regulation article 189 of the third law of development, approved in 2002 of Judiciary Head and whereby doing negotiations for a compromise between the parties in all civil and criminal affaires is entrusted to the council of conflict resolution. It is been tried in this article to study the conditions and stage of hearing of outlined conflicts of the conflict resolution council in the substantive and formational issue. The authority and options of conflict resolution councils have the size and limit that cannot exceed from them unless the legislator increase the purview. In conclusion, there are little conflicts in the need for creating such institutions that have been done to achieve these goals in the law of conflict resolution councils in order to do some reforms. Checking the limitation and authority of the councils can be considered as an important step to improve the situation performance of council. It is necessary to determine the purview of conflict resolution council to clarify the limits of its jurisdiction.

Keywords: Conflict, Conflict Resolution Council, Handling Conflicts.

INTRODUCTION

The problem of crowded courts in Iran has always been a problem and has created many problems for citizens and tribunals. One of the causes of creating conflicts resolution councils is minimizing the burden of councils in courts and better hearing of these issues. The word of peace as one of the existential philosophies of conflicts resolution councils is been discussed and has been mentioned in different chapters of the Quran including the first verse of Enfaal Surah, verse 43 of Maeede Surah, verse 150-152 of Shoara surah, verse 48 of Nahl surah and verse 220 of Baqarah surah. In addition, it is been emphasized in the tradition of Islam prophet, and is also recommended in juristic books stating that it is better that the judge invite the parties to the peace at the time of referring the case.

Given that our legal system is based on Islamic legal system, each entity that is associated with this system should have a juridical basis¹.

In Islamic jurisprudence, there is no conflict resolution with the history and name of conflict resolution council. The only system, that is somehow similar to it, is the system of consolidation

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judge, some important differences of which to the council are made clear with a little scrutiny. Some of these differences are as follows:

The council members are not judges and do not have the condition of judging. Despite the judging nature of conflict resolution council, there is no necessity on being a judge in council (Article 5 of the Regulation) while the consolidation judge shall have all the circumstances of being judge except appointment².

Referral to the conflict resolution council is mandatory. While in the case of consolidation judges, the parties select the judge with compromise.

In order to reduce the people refer to the courts and in order to develop the public participation, resolving local conflicts and resolving the matters which do not have judicial nature or its judicial nature is less complicated is assigned to the conflict resolution councils.

Judicial jurisdiction of hearing to the legal and criminal affairs by conflict resolution councils is been approved under the article 189 of the third program law of country's economic development.

As it is concluded from this article, the reduction of people referring to the courts and the development of public participation is as the existential philosophy of the conflicts resolution council. In addition, the founders of the conflict resolution councils, as stated by the head of the judiciary in his speech, reduce the judgment prorogation and the peace between the parties as one of other purposes of the council. Although that the available statistics indicate a reduction in referrals in case of the reduction of people refer to the courts, this topic is against one of the fundamental principles of the law. In article 34, it is the right of people to go to the courts. But this article (Article 189 of the Law of and economic, social and cultural development approved in 4th May 2000 by the parliament) and paragraph 4 of article 1 of its executive regulation have disqualified courts of Justice from judging. It is better for the referred to be under the agreement of the parties as consolidation judge and do not refer to the litigations perforce in order to not to be against the fundamental law³.

The definition and concept of civil procedure of conflict resolution council. It is a set of rules and regulations which litigations use it in refer to the conflict resolution council in order to complaint and resolve the conflicts and contest and council members referred to it in attempt to consider and make the decision in the purview. All of these are called civil procedure of conflict resolution council.

The Benefits of Civil Procedure of Conflict Resolution Council

According to article 10 of the hearing regulation, the council is not subdominant of civil procedure formalities, but it does not mean that there is no rules and procedures in hearing. In fact, the mean of legislator is the civil Procedure formalities that prolong the procedure and hearing, because the lack of civil procedure in the conflict resolution council cause the chaos in hearing, style put on and strength ratings. In addition, in the case of same procedure, the returnees to the conflict resolution council cannot set their desires correct and legally and take action rather than their administration justice. Moreover, plaintiff does not know his task in the order of respond to the conflict and most important than everything, the council members can take the action rather than assessment of the right from the wrong and verdict and prohibit from the outbreak of conflict in elicitation by observing the criteria and coordination in hearing.

The Way and Stage of Hearings in Conflict Resolution Councils

At the same time in order to avoid the chaos, hearing in conflict resolution council is subdominant of process and rules of conflict resolution council in hearing the statement of the parties that may outline their petition and it is as follows:

Steps of Hearings in Conflict Resolution Councils

1. The plaintiff or his lawyer will state their complaint or request and it should be claimant for a right that is on accused with defendant and the mentioned right should be incontrovertible and conclusive. The possible existence of right and possible claimant cannot be one of the hearing rules on a topic in conflict resolution councils and claimant must claim his lost right. So, if the claimant say “may” I credit such a quantity from defendant, the conflict resolution council will not be faced with any task, therefore, right must be known as definite, conclusive and irrevocable from the side of defendant.

2. Any right that is planned by the plaintiff should be authorized by the owner of right or by a person who is the legal successor of the rightful person. The owner of right should be sane and mature but incompetent people (minors, stupid or insane) who are under the coercive guardianship, their father or “their coercive guardian” does litigate to the point of guardian from them or undertakes the task of defense by the guardianship on behalf of them in the *Lis Pendens*.

About the insane people that their insanity is not connected to their pupil age and they afflicted later and due to the fact that the insane have the lack of will to carry out actions and their actions are outside of their will, a protector is been determined for them in terms of their incapacity and the prohibition of legal acts. In fact, there are two causes about the insane people whom their madness is connected to the childhood: one is childhood and the other is psychosis. The coercive guardian (father or fatherhood ancestor) acts provincial and the lawsuit is by them, or undertakes the task of defense by the guardianship on behalf of them in *Lis Pendens*.

3. The claim must be legitimate; the layout of each claim depends on the existence of a rational and legitimate right that the plaintiff claims the existence of it on the conscience of defendant. So, basically the conflict resolution council does not have the right of hearing to the conflict due to an illegal or illegitimate contract.

Contracts which intrude the public order or are set against the moral codes or are illegal are no audible. For example, there is a complaint saying that I am the creditor of such a quantity and the cause of quest is doing an illegal action that is intruding the public order or the contract is been regulated immorally, conflict resolution council should reject this argument and does not have the right of hearing it.

4. The permission to start hearing in conflict resolution council is that the claim should be present, so if the plaintiff, by laying out a claim and documentation, demand a right the repayment date of which that has not started yet, the conflict resolution council does not have the right to consider it because the commitment of the debt repayment has not been led yet and the repayment date has not arrived.

5. the plaintiff in action must be beneficiary and take interest for himself or persons under his guardianship and tutorship for hearing in the conflict resolution council, and if a person layout a complaint by referring to the council saying that our neighbor demands a quantity from a person or claim that his father(who is alive) is demanding from the defendant, the *Lis Pendens* is issued in terms of the lack of side ((the lack of hearing a lawsuit)) and if the neighbor or his father has not delegated his, the conflict resolution council will announce the claim banned by the mentioned explanation.

What is mentioned as the condition for the hearing principles is exactly the execution condition, and if in case the statement is being issued and the plaintiff loses his side or it is become obvious during the execution that the plaintiff has been without side, the hearing basis has not been correct and the statement execution will be suspended.

Hearing in Conflict Resolution Council

It is based on whether the article 189 of the third program law of economic, social and cultural development (Conflict Resolution Councils) and article 7 of execute regulation of this article disaffirm the general jurisdiction of the Justice courts in case of establish the council or not? The conflict resolution council is a quasi-judicial legal establishment and disaffirms the jurisdiction of the public courts of justice due to the view that since the article 189 of the third program law of economic, social and cultural development has transferred the resolve of the affaires that do not have judicial nature or are less complex to the conflict resolution council and its execute regulation determines its purview and the jurisdiction in the framework of this law in article 7 which is implied from the opposition concept of paragraph 4 of article 1 of the regulation, is in the jurisdiction of council merely in case of establishing the council and considering the affaires in the purview.

Despite the belief that article 189 of the third program law of economic, social and cultural development is contrary to the 159th principle of fundamental law, there is no choice but to put it into action, because it is approved by the guardian council and the regulation is in the area of law in the topic of jurisdictions (Article 189). In contrast to this view, it can also be said that the jurisdiction cases should be determined by law and we cannot produce jurisdiction for a source in the form of regulations, because the article 10 of the civil procedure knows the hearing to the claims in the jurisdiction of the courthouse unless the law determines another source.

All affaires that have been entrusted to the conflict resolution councils have been efforts to come to an end by agreement. In case of reaching a compromise with its condition, process ionize is written in the same way that it was and is will be signed by the members of the council. Mentioned process ionize is penetrant and reliable for its parties and legal successors and as occasion arises, it would be executed at the time as well as the commandment of courthouses or as the case specifies, through the implementation of the commandment of Justice or relevant departments and possibly the executive officer of judicial after the conclusiveness with the opinion of consulting of council.

The hearing of the council requires written or oral demand that is written on process ionize. The parties must have been inhabitant or have a job in council area or any parties accord on action compromise in the place of residence or work of opposite sides. In the claims relating to personal property, the property must be located within the council area as well, although the parties are not resident in that area. In crime, the crime should be located in council area and the framework of law should be considered determined by the purview in article 7 and implied from opposition concept of paragraph 4 of article 1 of regulation in case of establish the council (Article 8 of the Regulations). Council hearing is not subdominant of formalities of civil procedures law and laying out the claim or fights, protest and appeal revision and execution votes are free at any stage (Article 10 of the regulations). In case of coming to an agreement, the topic of agreement and its conditions will be written in process ionize and signed by the members of the council and the parties. Its contexture is penetrant and reliable for the parties, heritors and their legal successors and it will be executed in case of necessity such as courts of justice commandment (Article 14 of the Regulations). In other cases, the council emissions its vote in the written form, adductive and documentarily according to the opinion of majority and it should not be contrary to the laws of right creator, otherwise it is not valid (Article 16 of the Regulation). There are uncertainties whether the article 189 of the third program law of economic, social and cultural development (Conflict Resolution Councils) and article 7 of execute regulation of this article disaffirm the general jurisdiction of the Justice courts in case of establish the council or not? The conflict resolution council is a quasi-judicial legal establishment and disaffirms the jurisdiction of the public courts of justice due to the view that since the article 189 of the third program law of

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In order to expedite the hearing and judgment prorogation, the conflict resolution council was exempted of the strict observance of procedure law formalities, as well as the high costs of the complaints or claims, protest and revision appeal. This is one of the certain advantages of hearing in the conflict resolution council. In all cases, the only cost is just set as 10 thousand RIALS and has no administrative costs. At present, the civil affairs require payment of one hundred and fifty thousand (150.000) RIALS and in Criminal Matters fifty thousand (50 000) RIALS as the cost of judgment. In financial Lis Pendens in civil courthouses, about 7.000.000 RLS are received for a suit demand the value of which is 200.000.000 RLS due to miscellaneous taxes.

Hearing and Pronouncement in the Conflict Resolution Council

First paragraph: inherent jurisdiction

The inherent jurisdiction is the general jurisdiction of justice courts in hearing the claims and conflicts in relation to non-justice authorities and jurisdiction of rudimental courts compared to revision courts and vice versa, as well as the jurisdiction of the public courts of Justice compared to special courts of justice and vice versa and legal jurisdiction of law courts in hearing the civil claims compared to punitive courts and vice versa.

Second paragraph: relative jurisdiction

The claims are different in terms of demands and pricing. That jurisdiction that is determined based on the topic of desire and quorum of claims is called relative jurisdiction, such as the jurisdiction of 2 former civil courts to the 1st legal case and vice versa. The relative jurisdiction was eliminated with the approval of the formation of the public and revolution courts totally and only by adducing on the article 21 of the mentioned law about the revision reference of state and Supreme Court of the country, the relative jurisdiction is predicted limitedly. However, any position is been determined for relative jurisdiction with the approval of the new civil procedure law approved in 2000 and the prediction of state revision stage and rehearing appeal in Supreme Court of country under the articles 326 to 416 of C.P.L.

Third paragraph: local jurisdiction

The jurisdiction that is determined to the validity of the location of judicial authority is called local jurisdiction. So, the related claims to each jurisdiction have been discussed and heard in the settled source in that jurisdiction. Article 11 of C.P.L provides that to submit the petitions that must be taken in the following order:

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- Residency of the defendant.
- Family residence.
- If he has personal property.
- Residency of the plaintiff.

There are two exceptions for the mentioned general principle in article 11 of C.P.L:

1. Mandatory exception of new article 12 of C.P.L and 23 of former C.P.L.
2. Optional exception of new article 13 of C.P.L and 12 of former C.P.L.

A –Compulsory exception: Claim about the personal property including, ownership claim, prevent from rights, forcible entry and other rights related to are adducted in a court that the personal property is situated in that area.

B - Optional exception: in commercial claims and claims relating to impersonal property which are due to the contract that the plaintiff can take action refer to a court in the area of which the contract is done or commitment has to be done there, or as a general rule implied from new article 11 of C.P.L at the residency of defendant, where there is the personal property of defendant or residency of plaintiff. Because the article 13 of C.P.L does not divestiture concession and option of article 11 of C.P.L, but considers more distinction for commercial claims of plaintiff and claims relating to personal property due to the contracts.

Fourth paragraph: Personal jurisdiction

Maybe the jurisdiction of judicial authority is determined by the side validation and the situation of the committed person such as hearing the crimes of holders of judicial that are heard in Tehran or offenses of government employees that are heard in the province. The jurisdiction of the court is determined by the validation of the person and his side. The local authority is an exception to the general rule. This is an exception to the general rule of local jurisdiction. The rules and criteria for jurisdiction recognition of person is the occurrence date of the crime. Therefore, resignation or dismissal and retirement after occurrence of crime have no effect on pre-jurisdiction.

Fifth paragraph: additional jurisdiction

Principally, the heard should be in order of expedition and prevention from making the conflicting decisions and current wellness procedure of accusations in a court. However some of them are in the jurisdiction of the other authority.

A - for example, someone who commits two crime, one in Shiraz and another in Kerman and both crimes are from one degree, the authority in the area of which the accused is been captivated has the hearing jurisdiction right to both of crimes in this case.

B - If a person commits several crimes in different places, a court will hear all the crimes that hear the most important crime, and righteous court has additional jurisdiction on hearing the more important crime.

C - Likewise, hearing to the steward crimes and the accessory is in one court. Of course, the law determines the additional jurisdiction cases and the courts of justice do not have the right to establish or cancel the additional jurisdiction. Consequently, other individuals and officials will not have such a right, as well.

Conflict Resolution Council from the Exceptional Non Justice (Exclusive) Sources

These kinds of sources are those that their appointment and dismissal of "judges" are wholly or trivially upon the executive system or it is out of the jurisdiction of the judicial system. Conflict resolution council, prospected sources in the labor law, registration sources and etc. are included. The execute regulations of Conflict resolution council was approved in the implementation of

article 189 of the third program law of economic, social and cultural development of Islamic Republic of Iran, based on the formation of the conflict resolution council approved in 4th May 2000. Given that article 189 of the third program law in article 134 of fourth program law has been validated for a four-year period of the fourth plan. the regulation determines the necessity of establishing a conflict resolution Council at any place, including villages, wards, towns or areas of the city and its local jurisdiction is been determined by the head of jurisdiction and governor along with the consultation of Islamic council of a city or a village. Council formation depends on the agreement of the head of state justice.

How to Plan a File and the Stage of Hearing in Conflict Resolution Councils

Planning a file and the stage of hearing in conflict resolution councils is almost the same as of the courts of justice. For claiming and planning a file in conflict resolution councils, one should refer to a conflict resolution council that have the local jurisdiction to hear a case (regard to the residence location of the defendant) and in cities refer to the relevant conflict resolution council and catch the petition form, write the topic of conflict and requisite. Hearing in council requires payment of 30.000 RIALS and in criminal affaires 50.000 RIALS is cost of hearing. The cost of hearing has changed according to the new law of the councils and has gone up. Then, by referring to the referrals, the cases are recorded and the related file is registered to address to one of conflict resolution councils' referral parts and is sent to one of the conflict resolution councils in order for the hearing to be started. In criminal affaires, presenting a demand within the jurisdiction of council is enough. After the referral of the file, conflict resolution council does some proceedings such as they call up the parties and attempt to closed up the file to the peace and do other legal proceedings and eventually proceed to pronouncement or decision issuance or correct the report. In the absence of a compromise, if the subject is within the jurisdiction of the council, the Justice council releases the sentence after consultation with council members and obtaining a written opinion that in fact is called advisory opinion. In this case, the only criterion to make decision and pronouncement which has legal validity is the opinion of the judge. Appointments that are issued by the council such as the supply of reasons, local research and examination of the location, seal the wand and engrossment of the wand and etc. are within the jurisdiction of the council members the three number of whom will sign the counteract.

CONCLUSION

The hearing in the council is much easier, and with less time rather than the hearing in courts of justice in the point of shape and this matter causes only a slight difference between these organizations just in shape of hearing. The extreme formalities of civil procedure is not been observe, but if we want to review the analogies, the hearings that are done in the council is one of the substantial points that connects the conflict resolution council to the judicial system. All of the conflict resolution councils are affiliated to the judicial system. Given that the conflict resolution council, as a quasi-judicial system, can play an effective role in bringing the parties to the agreement. since the conflict resolution council plays a more effective role in the field of peace, hearing in the council can be of great help to the segments of society to prevent the accumulation of simple cases in courts of justice that cause the proliferation of administrative and judicial office and due to the current facilities and the growing population.

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Another thing that is worth mentioning is faster and easier hearing, thus is better than the long-term hearings with the negative effects between the claim parties, the entry of non- expert people in legal affairs in urban conflict resolution council, which can cause prolongation of the proceedings and can have a good result for both. But on the whole, it is a more simple and understandable language. However, is better to use more experienced judges and individuals with expertise and experience together within the repeated personal and workshop training. hearing in the council more often has the shape of consultation and negotiation by the members council, most of the hearing in the council is in a form, and by the approval of the new laws of the councils these issues are paid more attention to, and series of conflict resolution council are like a coherent and integrated organization and a system is taking shape which is more coordinated than in the past. We hope that to have better and more effective results day after a day rather than in the past. Hearing in the council and hearing in the courts of justice have no major differences in shape, just the formalities of civil procedure in the courts of justice have been complied completely that are done in an easier way with the request or even orally and slangy in the councils.

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