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Jurisdiction of Conflict Resolution Councils in Iran's Law

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ABSTRACT

Conflict resolution councils are among the institutions that work and cooperate with the courts of justice and have been able to clearly demonstrate their position over years. Jurisdiction of the conflict resolution councils in phasic affaires is not subdominant of civil procedures formalities. In the order of substantive, the hearing is been increased up to 10 million RIALS in the beginning and then the cost of hearing is been increased up to 50 million RIALS and at present by the new bill of conflict resolution council, the cost of hearing is been increased up to 20 million RIALS in the jurisdiction of council.

Keywords: Jurisdiction, Conflict Resolution Council, Substantive affaires, Phasic affaires, claims.

INTRODUCTION

Accessing to the justice is one of the most important incentives that have forced human being to accept and tolerate the social constraints and the punishment of crime from a long time ago. Human history is full of understandable concerns that are due to violation and assault against the saints, customs, traditions and social norms. Article 8 of the council' law determines the council jurisdiction and the council can esteem to make peace and reconciliation between the parties in the case of their compromise in all civil and legal affairs, all of forgivable crimes and personal aspect of non-negligible crimes¹. According to article 9, the mentioned law of the council is authorized to issue the warrant in deterrents crime, security and corrective measures and the moral affaires such as traffic offenses the total and maximum money and legal penalty of which is 30 million RIALS or three months imprisonment and perpetuating testimony. Since the principals of hearing in council are less expensive than in courts of justice and it is without formal procedures, so the comparison of councils with court of justice determines the strengths and weaknesses points of the council and identifies the merits and flaws of the council rather than judicial courts of justice².

In fact, the result of attention and trust of government to the ability of people in the general sense of word on the one hand and lowering the burden of legal authorities in hearing to the legal and judicial conflicts and lawsuits of citizens on the other hand were the reasons of establishing the Conflict Resolution Council³. This proceeding with the recent studies in religious rules, research, verses and traditions in the form of article 189 of the third program law of the economic,

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social and cultural development of Islamic Republic of Iran dated 4th May 2000 was approved by the Parliament^{4, 5}. Conflict resolution council is a young institution that was established based on article 189 of the third program law of economic, social and cultural development of Islamic Republic of Iran from 2002 and gradually developed across the country. This council hears to some legal and criminal lawsuits within its jurisdiction. According to some of the relevant provisions of these councils and their activities in the past few years, the strong and weakness points of this institution can be assessed. Hearing to the legal and criminal lawsuits in the conflict resolution council is rated in some viewpoints compared to hearing in the courthouses. On the other hand, hearing the cases in the mentioned council has faced some objections that can remove with proper planning and approval of new regulations.

Position and organizations of conflict resolution council

Conflict resolution council was formed in executing the article 189 of the third program law of economic, social and cultural development of Islamic Republic of Iran in order to reduce people's recourse to the courts and in order to the development of public participation consisting of three members⁶. Council members include a person as president of the council by selection of Judiciary, and one by the selection of related city or county or village council elections and one local trustful that is selected by an electorate concluded of judiciary head, the governor, police chief and Imam (in the absence of IMAM, the local eminent clergyman) for a period of three years.

Membership in the Council is honorary, but in proportion to the situation of jurisdiction, level of activity and usage statistics, an appropriate reward will be paid at the discretion of the judiciary head of the province. Each council has a secretariat that it's responsible is appointed by the Council⁴.

Judiciary selects one person as consultant of the conflict resolution council among practitioners or retired judges of universities and institutions of higher education in law major or among the other graduates in law major conditionally and has the condition of recruitment of judges⁷. Votes of conflict resolution council will be sent to the consultant. And if the consultant diagnosis the decision of the council in the order of mentioned qualification and provisions in the regulation and other related laws correctly, he will communicate the execute of council decision in civil claims on five days to the responsible of local courthouses office or council secretariat. In criminal affaires, he will communicate the issue to the disciplinary officer in order of execution the council decisions and if the council diagnoses that the jurisdiction of conflict resolution council and other rules are not observed in hearing, the case will be sent to qualified authority of justice to be heard.

Under the article 7 of the Regulations, the council in all civil and criminal affairs that hearing to which depends on the complaint of private plaintiff and the pursuit will be suspend by his forgiveness, the negotiation can be done in order of making the compromise between the parties. But it can also resolve the claims and complaints as follows:

Council options in legal affairs:

All financial claims about the movable assets, liabilities, profits, losses resulting from crime, retraction tortuous liability and sales extradition in movable property, claims for arrears alimony, dowry retraction, up to 10 million RIALS (in the case of the consent of the parties without observe the quorum) such as: demand amount of cheque, promissory notes, bills and ordinary documents, to demand rent, dispossession claim (if the ownership is not the subject of conflict), claim the

Jurisdiction of Conflict Resolution Councils in Iran's Law

arrears wages and etc., hereditary succession issuance request (If the conflict is not in bloodline), non-financial claims such as evacuation of residential property, perpetuating testimony, adjusting the rent, negotiating and issue a corrected report in family conflicts (the divorce topic) and asking for compromise in matters which the demands are non-financial⁸. In legal Affairs: "All claims relating to the movable property, liabilities, profits, and losses resulting from crime, tortuous liability if the demand is not more than ten million RIALS". According to the new bill of conflict resolution council in accordance with article 9 of paragraph

A) Financial claims about the movable assets to the quorum of 100 million RIALS are discussed in court of justice except the cases that are conducting in the date of this law being enforced. As well as the paragraph (C) of article 9 shows "family conflicts about the dowry to the quorum of 200 million RIALs that are written in paragraph (A) of this article". Dispossession conflict of immovable property, evacuation of residential and claims relating to easement rights such as the right of way, water course, harassment, also prevents from forcible and right entry if the principle of ownership is not controversial ". the obligation to carry out the terms and commitments about the agreement and transactions within the jurisdictions in property claims ". sealed, inventory and deceased person' estate appraisal" articles 166 to 205 of the law of non-litigious matters about the seal of deceased person' estate and removing it and articles 206 to 244 are the same written law about the deceased person' estate appraisal. Council shall attempt to conduct with certain formalities after the seal request or deceased person' estate appraisal at first and should attempt to issue the seal request or deceased person' estate appraisal consequently according to the above-mentioned provisions. The purpose of deceased person' estate is to determine the appraisal that determine the amount of deceased person' estate and mortal liabilities and inventory from the estate of deceased person with description of properties and its assessment and determining the claims and debts that in accordance with final law and official documents and related documents to the mortal or heirs debtors of confession is essential. The record of deceased person' estate appraisal is archived in the office and interested parties can use it. "Perpetuating and maintaining the testimony and seignior". Perpetuating testimony request is in the jurisdiction of the conflict resolution council because of the article 14 of perpetuating testimony is in the jurisdiction of the courts within the jurisdiction of which the seigniors and testimonies are located. In this case, it makes no difference whether the testimony and seigniors requested to supply depend on immovable or movable property. Perpetuating testimony request is accounted non-financial and the cost maybe written or oral. Perpetuating testimony request may be during the procedure or before the action (Article 150 of C.P.L). However the request of perpetuating testimony would be the certificate of witnesses, the article 14 is imperative binding as well. Of course, in places where the conflict resolution council is formed, perpetuating testimony request is in the jurisdiction of mentioned council. Indeed, generally the judges who are practitioner in department hours in justice, as well as having multiple missions in order to be present in legal configurations and commissions like the commissions of article 100, 77 and 55 of the law of municipalities and conflict resolution commissions of labor law and taxes law, or judicial units of traffic and or national lands and many others cases in the afternoon across the country. And they also have a family and need a time to deal with family affairs and needs to relax and renew powers and sometimes they are in higher levels of university studies. However, naturally their extra attendance in conflict resolution council will be impossible and they will have to hear the files not in person and issue their rulings. Accordingly, it is natural for the legislation demands to not be realized for passing of a fair judgment. And more importantly, the council is under the effect of judges' attendance with the wide range of announcement possibilities in legal cases and with the definition of jurisdiction based on the financial value in legal claims up to 50.000.000 RIALS that is five times more than the set amount in the regulations of 2002. The existence philosophy of

conflict resolution councils is been ignored that is contained in any of the first and second development plan law including: peace and compromise establishment to resolve matters which do not have judicial nature and hearing the claims that are less complicated.

For example, hearing the dispossession claims of immovable properties or claim of selling proof and commitment to set the official document of property with a real value of more than 50.000.000 million RIALS (which is from the judicial conflicting claims and hearing to it in the different stages of judgment in the dignity of experienced judges) is done in conflict resolution council according to the desired calendar accordantly unrealistic or based on old ordinary documents calendar or transactional value and even in absentia. Otherwise, the council and council judge are allowed to hear and announce to the claims with values of more than 50.000.000 RIALS with the trivial cost of hearing, if the claim parties compromise to the hearing of conflict resolution council.

While by oversimplification of doing an important issue in this law with the title of perpetuating testimony, hearing to the perpetuating testimony request is as an affair with low judiciary nature and it is somehow on the responsibility of member or members of council while the judge of council has no responsibility for the actions of the council members in the time of perpetuating testimony. Thus, it is a reprehensible thing in cases that these councils esteem to educate the testimony on behalf of one party of claim by fooling the informed applicant of the law, rather than perpetuating the testimony that this action is forbidden in civil judgment and in fair judgment⁹.

In the topic of conflict resolution council's jurisdiction 1 and its judge (paragraph A of article 10 of the proposal bill), it is shown that the conflict resolution councils are allowed to hear the financial claims in this bill to the quorum of 200.000.000 RIALS while in the beginning of these councils' founding in 2002 that was in the line with the third development plan and these sources had the authority to hear the financial claims to the quorum of 10.000.000 RIALS and then in 2010 this quorum increased to the 50.000.000 RIALS because of the law of conflict resolution council while in the introduction of proposal bill, the topic of hearing to the conflict is been discussed. So, the administrative and state system will classify the financial claims with the worth up to two million RIALS in category of simple conflicts in the case of bill approval.

The financial claims can refer the subject to the council according to the claim quality or conflict in case of the parties compromise disregard of quorum and as well based on the new proposal bill of article 11 of conflict resolution councils procedure" in all conflicts, family claims, other civil claims and forgivable crimes, the investigator court and the possibility of resolving it through peace and compromise is just one time and during 3 months^{10, 11}. Article 11 footnote states likewise: "the councils are obliged to effort for resolving the claims or conflicts to make the peace and announce the achieved results to the referral judicial authority include attainment or non-attainment of peace in determined deadline for regulating the reform reporting or continuing of hearing documentary."

Council authority in Criminal affaires:

The council authority is in hearing the crimes that their extreme legal punishment is up to five million RIALS or the summation of legal punishment after the conversion of imprisonment into fine penalty of five million RIALS such as begging, vagrancy and crossing barrier of public places, breaching the provisions of the environmental hygiene, forging birth certificates, all violations of traffic regulations and etc.

Jurisdiction of Conflict Resolution Councils in Iran's Law

Another authority is hearing the offenses that their legal punishment is less than 91 days imprisonment or are inclusive of prison punishment, the subject of paragraph 1 of article 3 of the collection law of some state income approved in 1994-1995 in criminal matters of Section B of article 7 of conflict resolution council' law: "preservation in crime remaining and prevent from the escape of the accused in obvious crimes " and now "criminal claims of prison offenses who are worthy of 8th degree fine penalty punishment" according to the new proposal bill in 2015 paragraph H of Article 9 of the conflict resolution councils law. According to article 8 of the execute Regulation of conflict resolution council, the local jurisdiction of council in criminal affairs is as follows:

First-crime incidence in the council jurisdiction: As mentioned in the discussion of jurisdiction of judicial authorities, the principal is based on the jurisdiction of courthouse of crime incidence location to hear that crime and exceptions to this principle are listed in article 54 of the criminal procedure law. In accordance with paragraph "D" of article 8 of the executive regulation of conflict resolution council, if the offense took place in the council jurisdiction, the council is competent to hear (with regard to inherent jurisdiction)¹².

Second - habitation or preoccupation of claim parties in the council jurisdiction: if the two parties of claim are living in the jurisdiction or the preoccupation place of two parties is in the jurisdiction of the council, the council is competent to hear, even if the crime occurs in another place¹³.

Third – accord of the claim parties: provisions related to the local jurisdiction in criminal affairs are included in the mandatory rules and are related to the public order. So, the claim parties do not have the right to come to opposite agreement. But in the determination of local jurisdiction of the conflict resolution council, if the claim parties compromise anomalously, the rules of source jurisdiction of crime incidence location of the council are able and even obliged to hear it. The compromise of conflict parties against the local jurisdiction principal has been accepted with this condition that at least one of the parties should reside or preoccupy in the council jurisdiction^{13, 14}. Paragraph "B" of article 8 of the regulations stated that: "the conflict parties should have residency or preoccupation in the council jurisdiction, unless the parties agree on the action of the place of residence or preoccupation of one of them."

Fourth-task of the council in recognition of its jurisdiction: As mentioned above, rules related to the inherent jurisdiction have a mandatory aspect and the court must establish its jurisdiction in order of intrinsic and local competence without the need to the quote of claim owners to the jurisdiction of source. If it knows itself without jurisdiction, it should issuance of the issue of its inexistence jurisdiction. Conflict Resolution Council should study about its jurisdiction in hearing the claim in the case of refer the complaint as well and if it knows itself without jurisdiction, it should send the case to a competent court. Article 15 of the executive regulation has stated about the matter: "If the Council does not know the hearing to the propounded subject in its jurisdiction, the case should be sent to the judicial authority for hearing in criminal affairs."

Conflict in the jurisdiction of conflict resolution councils

In articles 15 and 16 of the Law, the conflict in jurisdiction has been considered in several aspects:

1. In the case of conflict in the jurisdiction of the council between the council and judicial authority, the opinion of judicial authority is binding and imperative.

2. In the case of conflict in the local jurisdiction between the located councils in a jurisdiction, resolving the conflict is on the first branch of public court of that jurisdiction. In addition, in case of conflict in the jurisdiction between the located councils in jurisdictions of a city or a province, resolving the conflict is on the jurisdiction of first branch of public court. About the councils located in two provinces, conflict resolution is on the first branch of provincial capital city public court that is stated about the jurisdiction of located council on that province at first¹⁵.

3. In case of conflicts within the jurisdiction between the council and other non-judicial authorities in one jurisdiction, conflict resolution is by first branch of public court of related judicial authority and in various jurisdictions of a province, first branch of that provincial capital city public court is the source of conflict resolution. In case of the realization of council conflict with the located judicial authorities in two provinces, the conflict resolution is by the first branch of provincial capital city public court that is stated about the jurisdiction of located council on that province at first¹⁶.

CONCLUSION

The aim of this study was to know the jurisdiction of conflict resolution council in phasic and substantive affairs. The most important function in conflict resolution council is trying to make a compromise between the claim parties. Of course, all stages of the hearing into the claims are optional. One of the largest herds in the beginning of conflict resolution council work was not having approved and independent organization, including appropriate administration and legal, financial organization for the council.

The council needs a coherent administrative and judicial organization, although attention to the training and presenting educational services to the council members in terms of quality is under the execution.

According to the statistics, most cases of referral to the councils are financial demands of people from each other and marital family conflicts. Leaving the charity and divorce are in the second grade and traffic offenses are located in the next position.

According to a belief of a member of the policy maker supreme council of state' conflict resolution council, lack of awareness of people from legal issues is of the targets of setting up these centers. These people can prevent from the occurrence of such problems by referring to judicial institutions and to legal counselors. This introduction will cause the decrease in number of cases and increase the efficiency of the judiciary. Meanwhile, the attendance to judicial and quasi-judicial circles as the conflict resolution councils will cause the dominancy of people on the rules and the speedup in the hearing process and study of cases. In some cases, the request of people from conflict resolution council is not in the range of their rights basically or it is in the opposition with the public interests. The per capita cost of hearing for each case in the judicial system has been more than 1 million RIALS, while this figure is only 36 thousand RIALS in Conflict resolution councils which represent the efficiency of this system.

Hearing in Council prevents the accumulation of simple cases in courts of justice, and according to current facilities and the growing population, it can be of a great help to segments of society and faster and easier hearing. Thus, it is better than a long-term hearing with the negative effects between the parties. Procedure process in court is long due to procedural formalities. While in the conflict resolution council, it is doing in the shortest time out of the procedure formalities.

Conflict Resolution Council members do not have the right to interfere in judicial affairs, until they have received notification of membership in the council and if they do some actions, they are ineffective and do not have the ability to run. But after the notification and assembly, they

Jurisdiction of Conflict Resolution Councils in Iran's Law

should take actions within their jurisdiction and are obliged to hear it. And if they refrain from hearing the case and do not issue the sentence, they will be refused from the right to accelerate the hearing and the prolongation of the procedure. The conflict resolution Councils are exempt from the strict observance of procedure law and are exempt from the high cost about the complaints or claims, as well as the protest and revision appeal which are from the certain benefits of hearing in conflict resolution councils.

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