

ADVANTAGES AND DISADVANTAGES OF PROCEEDINGS COST IN COURTS**A. Asgari*, A. Khajehzadeh**

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ABSTRACT

While the procedural costs have always been considered by Iranian legislator, there have always been many ambiguities and questions, which reflect differences of opinions and different interpretation of the charging customary procedure. Although legislators regard it positively as a barrier to prevent false claims and a financial source for the judiciary, some jurists and ordinary people argue that proceeding is a free issue and determining fees for it is a tool to put pressure on plaintiffs. This article tries to analyze cost of the proceedings and different ideas in this regard.

Keywords: *Costs of procedure, false claims, financial resources, the judiciary.*

Introduction

Legislators aim to establish justice among people by adoption of laws and their implementation, thus, legal provisions are predicted to protect justice and the rights of people who are referred to the judiciary. Civil Procedure Code plays an important role in this regard; but cost of procedure is a remarkable point. Article 502 of Civil Procedure Code expresses that 'costs of procedure' is the costs of sheets submitted to the court, court decisions, and court sentences. In other words, plaintiffs should pay these expenses at the beginning of trial for litigation; the costs are precondition for litigation. In the case of refusing to pay, the petition will be canceled. Most people who do not have the financial ability to pay these costs believe that the provisions are barriers to justice; it also causes waste of time and to delay in the proceedings. Although the legislators have positive ideas about the costs. They justify their idea by asserting that the costs are barriers to prevent false claims. As emphasized in the jurisprudential principles that insolvent is protected by God, people should not pay money for their petitions; but the legislators disregard this jurisprudential principle. It should be considered that proceeding is free in Islam. None of the Imams, the Rashedin Caliphs, and even post-Islamic governments does not charge the parties in order to implement criminal justice. Obtaining costs of procedure is follow the rules Western countries and the Iranians, with their positive

vote the Islamic Republic, have expected to eliminate Western rules from Iran Law and making it close to Islamic principles. In addition to explaining the costs of procedure, this article seeks to investigate its positive and negative effects. It tries to explain whether the costs of procedure prevent the rise of false claims. It should be noted that some organizations are exempted from these costs, but they are some exception that should be studied somewhere else (Shams, 2012).

The concept of costs of procedure

The cost of procedure is very important in a plaintiff's litigation, which is mentioned in Article 502 of Civil Procedure Code. It can be generally expressed as the payment of a series of determined charges required for the beginning of litigation and filing his case at the first reference of one plaintiff to the court. The costs of procedure are categorized in different groups, as following:

The costs of sentence, its implementation, and decisions mentioning beforehand that the costs are paid by the claimant. The costs of sentence is calculated by Bureau Chief and mentioned in executive sheet; it is deposited to the judiciary fund according to the provisions of Civil Law Enforcement. These costs include following items:

First: if the condemned is cash, 5% of the money is received as the cost of executions.

Second: If the claim is non-cash financial, the cost of execution is the demanded price.

Third: the executive costs of non-financial sentences are from 100,000 to 500,000 thousand Rials.

Fourth: the executive costs for evacuation of the leases place is 30% of on month rent.

Fifth: the executive costs the non-detrmined trials are from 100,000 to 500,000 thousand Rials.

Another cost of procedure relates to the expenses of local investigations and inspection of a place so that some plaintiffs or defendants refer to local investigations and inspections to prove their words. In general, all transportation costs of procedure in this investigation should be paid by the party who requested local investigations.

These costs are usually consumed by the parties. Article 256 determines enforcement for failure to provide the decision fees. It stipulates that if the court decides on local investigation, the plaintiff or the one one who requested appeal must afford transportation tools. If the action is stopped due to failure to afford transportation tools and the court cannot make a conclusion without local investigations, the claim will be canceled at the initial stage; in the appeal stage, the appeal will be canceled. It is noteworthy the cancellation of appeal due to failure to afford its means does not prevent enforcement of preliminary sentence.

Evaluation fees are charges used in many cases where some plaintiffs refer to the evaluation of an expert in justice, especially when there is a specialized point in the case or when the court needs the idea of an expert in a specific field. The wage of expert must be paid by the one who demands the idea of an expert. If the court demands the idea of an expert, the fees are paid by plaintiff at the preliminary stage and by the one one who has requested appeal. These conditions are stated in Article 259 of Civil Procedure Code.

In addition to the mentioned costs, there are some expenses not mentioned in Civil Code Procedure as the costs of proceedings. They are included in a group called 'compensation costs'. It includes the payment for lawyer (as each party may employ a lawyer to win the

case). Obviously, each lawyer receives a legal amount as the payment of his efforts. Thus, the payment of a lawyer is a supplementary cost considered in Article 519 of Civil Procedural Law as 'compensation costs.'

Procedure

When a plaintiff initiates a case in court, a series of steps should be performed in the court to make its sentence; all of these steps are known as procedure. Procedure has different types. Normal procedure that is evident for its written arrangements of proceedings or exchange of parties' proposals. In other words, if all proposals and proofs describe all aspects of the case, the court issues a sentence by itself; if the attendance of parties is necessary, the court will issue its sentence after hearing their explanations.

Exceptional procedure is another type of procedure that is less important due to the validity of subject and requires hasty and urgency; it is called also brief procedure and immediate procedure.

Brief procedure is explained as an exception to the principle of normal procedure because it is performed based on oral expressions of the parties. However, parties can present their arranged proposals to the court in order to explain and demystify the statements expressed at the hearing orally.

Immediate procedure is not a substantive procedure compared to original lawsuit, but it is a precautionary measure to protect the rights of claimant. It determines after the lawsuit and issuance of the sentence whether the claimant have been rightful and beneficiary.

The costs of procedure are categorized in different groups as the concept of general and particular (Bahrami, 2013).

- The price of petition sheets is 100 Rials for each sheet (Law on the Receipt of Government Revenues)
- The cost of each petition regardless of the number of pages and the type of claim (financial and non-financial), first petition, request for review, an appeal, retrial, and protest is one thousand Rial, which is attached to the petition as stamp

(Paragraph 3 of Article 3 of the Law on the Receipt of Government Revenues).

- The costs of certified copy and copies of the documents are equal to their original papers.

The cost of procedure in itself that is the costs of sentences and decisions differs with respect to the type of claim (financial and non-financial) including:

- The cost of procedure in non-financial lawsuits regardless of the stage of trial that whether it is in issuance of sentence, review, or appeal is 5000 Rials in all judicial authorities according to paragraph 13 of Article of the Law on the Receipt of Government Revenues. There is no difference whether it is naturally a non-financial lawsuit like divorce or a non-credit such as evacuation.
- The cost of procedure in non-financial lawsuits is regarded in two stages:
 1. In the initial stage, the costs of procedure is received according to the type mentioned or determined in the petition unless in immovable lawsuits such as expropriation of immovable property that is calculated based on the price of real estate in the region. The cost of financial lawsuits in this step is 1.5 percent of its price when it is booked up to 10,000,000 Rials; for more than 10,000,000 Rials, the percent is two.
 2. In protestation and appeal of the issued sentence, the cost of procedure is calculated as three percent of the sentenced issued for the condemned.
 3. In the stages of review, retrial, and third protestation to the sentence, the price of considering the case in the Supreme Court is three percent for cases up to 10,000,000 Rials. The additional prices will be calculated by the coefficient of four percent (Third part of paragraph 12 of Article 3 of the Law on the Receipt of Government Revenues).
 4. The costs of complaint, appeal, and protestation to a decision either in initial court or in retrial court of a province or the

Supreme Court is one thousand Rials in all cases (Paragraph 16 of Article 3 of the Law on the Receipt of Government Revenues)

5. The cost of other measures: the costs of protecting proof, demands, and provisional order are 5,000 Rials in all judicial authorities (Paragraph 13, Note 2, and Article 3 of the Law on the Receipt of Government Revenues). According to Article 325 of Civil Procedure Code, the cost for notification of the declaration and letter for protest is 1,000 Rials (Paragraph 11 of Article 3 of the Law on the Receipt of Government Revenues).

Calculating the cost of procedure when the condemneds are more than one

When there are more than one condemned, the cost of procedure is calculated in two ways:

- When the subject is not degradable and inseparable, the costs shall be paid by every condemned who presents retrial.
- When the subject is gradable and separable, every condemned shall offer an appeal and he will pay the costs with respect to the ratio of his share in the sentence. If all condemneds offer one appeal or one of them offer appeal for all, one cost of procedure shall be paid by the one who has presented the appeal and others should not pay.

Calculating the cost of procedure when the costs rise at the time of eliminating deficiency

When the lawsuit is imperfect and the costs of procedure have not been paid, a notification is issued for elimination of the imperfections. If the costs of procedure have been risen during the elimination of imperfections, the date of booking lawsuit and its registration in the documents is regarded as the criterion for payments according to Articles 53, 502 and 503 of Civil Procedure Code, although the payment may not be fulfilled according to the former criterion and the lawsuit has been presented incomplete (Kamalan, 2011).

Allocating the costs of procedure to compensation of delayed payment

If the compensation of a delayed payment is demanded in procedure at the time of presenting lawsuit, no booking and payment is necessary and it has no effect on the capability of retrial and revision of the sentence. Nevertheless, if the compensation of a delayed payment is demanded after the end of trial in a separate lawsuit, the claimant shall book it and pay the costs based on the provisions of delay; in this case, the capability of retrial is subjected to issued sentence about the lawsuit according to third paragraph of Article 331 of Civil Procedure Code.

General trend of charging a procedure

In financial lawsuits, the cost of procedure is 1.5 percent for 10,000,000 Rials; from 10,000,000 Rials, the cost is 2 percent for every additional 10, 000,000 Rials. In appeal and retrial, the amount is fixed and three percent of the demanded price. In a review request and third protestation, the amount is four percent (Abdullahi, 2012).

Legal gaps in determination of procedural costs in litigation

The main problem in the determination of procedural costs in financial lawsuits relates to immovable property since the local prices are taken into consideration; this price differs greatly with real price. The price is much less than the real price. For instance, the local price may be calculated 40,000 Tomans while the real price is four billion dollars. Therefore, it is necessary to modify the prices (Farahani, 2015).

In addition, some exceptions exempt one person from second charges including:

- Rejecting petition by Bureau Chief. According to Articles 53 and 54 of Civil Procedure Code, if the decision is made by Bureau Chief, no further will be paid by the plaintiff in the case of his protestation.
- Missing cases in the courts when the costs have been paid. If one case is missed in a court, no further cost is needed because the costs of procedure are predicted for investigation of the case; missing a case in

court means that it has not been investigated, thus, no second payment is required for investigation.

The relationship between procedural costs and tax

Jurists believe that all people are allowed to initiate litigation; all people can refer to courts and demand their rights. No expenses should be predicted for the claimants; but the legislators disagree with jurists about the costs of a procedure. They argue that the legislator has copied the regulation of other countries in determination of procedural costs; in this manner, it has accepted that beneficiary, or the claimant, must pay direct tax to the government to be allowed to initiate litigation. As noted in the definition of direct taxes, direct taxes are received from assets or income of individuals, without any intermediary. The cost of procedure is like direct tax. People must pay procedural costs for the services performed by the judiciary to revive their rights. This cost is paid to the judiciary by individuals who initiate a case in courts.

The relationship between lack of funding the judicial system and increasing procedural costs

The lack of funding judicial system has always been a subject of debates. Judicial authorities are demanding increase in judicial budget successively; but the legislator has increased the costs of procedures instead of increasing the budget. This may have covered the shortages of budget in juridical system, but it puts pressure on the people present their cases to the courts. It may revive the age of private revenge. It may lead parties to solve their problems personally without referring to juridical courts. This trend may intensify new crimes.

Advantages and disadvantages of procedural costs

Procedural costs have some advantages; the juridical system is the first beneficiary of the advantages. In other words, part of the budget of the judiciary is supplied via these costs. It has also indirect advantages for other people who initiate a lawsuit in a court. The costs of

procedure eliminate individual's false motivation for false claims. Therefore, the number of cases in courts is reduced and judges can make conclusions on other cases rapidly.

In spite of advantages, procedural costs have some disadvantages, especially for individuals who are not able to afford the costs at the beginning. Although the legislator has stated that poor financial status should not be an obstacle to fulfill one's rights and it opens the way for getting insolvency verdict, proving one's insolvency has some conventions and processes lengthening the time for trial. In addition, investigation of the insolvency verdict will take time for judges; this also wastes time and postpones the meetings held to investigate other cases initiated in the courts, which is sort of procedure prolongation.

Temporary exemption from procedural costs

For those who cannot afford to pay procedural costs, the legislator has predicted a solution called "insolvency". In this status, individuals are exempted temporary from all or part of procedural costs. However, it is a temporary decision and they must pay the costs of procedure when the excluded from the insolvency status. Insolvency sentence includes a set of particular conditions, terms, and different types, as following:

Terms for temporary exemption from procedural costs

- ***Presentation of insolvency petition***
Individuals who claim insolvency should present their petition to the court according to the conditions stated in the law. The petition must be in form of petition for review or appeal and oral expression that one has not the ability to afford costs will not lead to the issuance of insolvency verdict.
- ***Non-businessman***
The law deals with bankrupt debtor businessperson according to bankruptcy regulations in business law.

- ***Natural person***
Article one of Insolvency Law defines insolvent as "an individual who ...". The word 'individual' is used for natural persons (Insolvency Law, 1934).
- ***Proving insolvency of paying procedural costs***
In order to issue insolvency verdict, one's lack of financial ability should be obvious for the court unless the insolvency petition will be rejected.
- ***Iranian plaintiffs***
This term should be observed at the time of presenting insolvency petition to the court.

Proof of insolvency

An individual must prove his lack of financial ability to be included in insolvency law. This requires some steps. To prove the insolvency claim, at least four witnesses must be introduced to the court. The witnesses must be aware of his livelihood and attest his occupational status and lack of his financial ability in an affidavit. Although the issuance of insolvency verdict results in dissatisfaction of other party, the verdict has some advantages for the applicant because he can be exempted from a part or all procedural costs and he can employ free lawyer.

Office's responsibility in insolvency petition

According to Article 507 of Civil Procedure Code, Bureau Chief should present the case to the judge during two days after the reception of insolvency petition; in this manner, if the attendance of witnesses in the hearing is necessary, the court can sent a notification to insolvency applicant to bring his witnesses in determined date. Bureau Chief sends another copy of the parties and proclaims the date of hearing

Rejection of insolvency petition

In former law, the applicant of insolvency would be condemned to pay main claim expenses twice if his application was rejected. Current law has determined no costs for

rejection of insolvency application. Thus, such petitions have been increased, which may cause frequency of such cases in the courts.

Insolvency subject

According to the current regulations of Iran, insolvency types are categorized in three groups in terms of their subject:

- A. *Insolvency of paying procedural costs*
- B. *The condemned's insolvency of paying liabilities*
- C. *Insolvency of paying debt or executive fees*

Insolvent's heirs and merchant's insolvency

Since the legislator has designed Insolvency Law so that to protect the rights of poor people, all individuals are not subject to this law. In this regard, if the insolvency applicant died during lawsuit, his heirs cannot take the advantages of insolvency verdict. As insolvency verdict is issued for a person himself, his heirs should pay the procedural costs if they have financial ability unless the heirs are insolvent and they can prove it in court. If a merchant claims insolvency, he should present bankruptcy petition according to Commercial Act. In this case, he can use exemptions of procedural costs. Here the law has been designed to reject insolvency request of merchants because making decision about their assets requires accurate investigations. In addition, the legislator has separated merchants from ordinary businesspersons who are included in insolvency law.

Ambiguity in the costs of procedure

Law on the Receipt of Government Revenues and their Consumption has not determined the costs of procedure, appeal, protestation and retrial for non-financial cases. This issue had remained unresolved in the former rules. On the one hand, Legal Department announced in 1970 that the costs of non-financial procedures were determined unconditionally and the unconditional state covers both initial courts and retrial courts (Opinion of Legal Department in civil matters, p. 266). Therefore, the costs of above lawsuits are 5000 Rials in the stages of review, retrial, third protestation, and appeal. On the other hand, the legislator has doubled the costs of above lawsuits in financial cases; this rule can be generated to non-financial case (Nobakht, 1997). Thus, it can request 10,000 Rials for these lawsuits. However, the first solution seems more reasonable (Mohajeri, 2013).

Conclusion

Undoubtedly, the legislator decided to establish justice by adoption of laws. Predicted provisions about the costs of procedure in Civil Procedure Code are trying mostly to firm justice. Proper implementation of these provisions prevents false claims in courts; but the idea cannot minimize the problems. There are negative opinions in this regard arguing that procedural costs are wasting time. Therefore, the condition can eliminate justice, which has important place in courts of justice.

References

- Abdullahi, H. (2012).** The ways to receive procedure costs in criminal and civil cases. 2011
- Bahrami, B. (2013).** Financial and non-financial lawsuits. Volume I, Sixth edition, Idea Makers Publication
- Farahani, J. (2015).** Insolvency. Tehran press, Ltd
- Kamalan, A. M. (2011).** A collection of consulting ideas on criminal law. First edition, Kamalan Publication
- Mohajeri, A. (2013).** Details in the Code of Civil Procedure. Volume I, Idea-makers Publications, Tehran
- Nobakht, Y. (1997).** Judicial ideas. Fifth Edition, Keihan Press, Tehran, Iran
- Shams, A. (2008).** Code of Civil Procedure. Volume II, Seventeenth Edition, Derak, Tehran