

EXAMINING THE LEGAL PRINCIPLES OF LAWYERS IN CASES IN THE CIVIL PROCEDURE LAW

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ABSTRACT: THE Code of Civil Procedure of the General and Revolutionary Courts of Civil Law expresses the rules of procedure and rules of procedure in civil proceedings, which consists of nine and 529 articles of law, and the second part, which contains Articles 31 to 47, regarding the representation of cases in lawsuits These materials deal with various issues related to lawyers in lawsuits, including the number of lawyers and their number in legal cases, the need for certain conditions for lawyers and the manner in which lawyers are granted, the powers of attorney and in what cases the lawyers are not correct, how to dismiss the attorney and How lawyers are present at the hearings if they are multiple. Considering that the laws and regulations of the Islamic Republic of Iran are based on holy religion, or at least they should not be opposed to religious rules, it is important to study the legal principles of the rules and regulations, including the materials related to the lawyers in the cases. Consideration and consideration of the provisions of the Code of Civil Procedure for the Civil and Commercial Tribunals on the Lawyers' Proclamation is clear in the lawsuits that have been clear on legal jurisprudential lawyers' jurisprudence and that Islamic jurisprudents in matters related to lawyers in The jurisprudential texts have been exhaustively or thoroughly transposed.

KEYWORDS: jurisprudence, law, lawyers, lawsuits, civil procedure.

I. INTRODUCTION

The existence of specific and binding conditions and conditions for conducting hearings and hearings in the judiciary and judicial systems of the world, including the judicial system of Islam, is indispensable and inevitable. The Islamic judicial system is based on a fair result and non-discrimination and observance of the rights of the parties to the lawsuit. In order to achieve this ambitious goal, it has laid down precise and subtle requirements and requirements regarding the procedure for holding hearings and procedural rules. The Code of Civil Procedure for Civil and Criminal Cases, which contains binding provisions in civil and non-criminal proceedings, includes various issues at all stages of proceedings. One of these issues of great importance is the law in cases where the law after the acceptance of this right to the parties and parties to the lawsuit has introduced the manner in which this right and its conditions are applied in the second part of this law. In this study, the juridical foundations of the abovementioned articles are explained. And to what extent the requirements of the law on the lawyer's rights in claims are based on Islamic jurisprudence in this regard. Of course, considering the unity of the basics of some of the legal materials and the fact that each of them explains the repetition and the expression of the word, only the legal basis of the said material is stated.

II. DEFINITION OF THE CIVIL PROCEDURE LAW

Article 1- "The Code of Civil Procedure is a set of principles and regulations that are in the process of reviewing the affairs and all civil and commercial cases in public, revolution, appeal, Supreme Court, and other authorities that are required by law to comply with it. Are used. "

The term "civil procedure" consists of three words: religion in the sense of the word, method, tradition, rule, and religion. In the law of the civil procedure, the word "ritual" means the method and the method used. A court hearing is meant to be considered for judgment and judgment. A procedure is defined as a particular set of operational procedures used to find a judicial solution, such as a set of rules that are used to make a decision in a given dispute. The trial has been understood as a discipline of law, the purpose of which is to determine the rules on the judicial organization, the jurisdiction of the judicial authorities, the determination of the rules on the types of claims and the implementation of court decisions. (mohajeri, 1392, p. 1, 37).

3.1 The Rules of Procedure of the Hearing Officer of the year 2000 lay down Articles 31 to 47 in relation to the issue of representation in litigation. In this material, after publishing the selection of a lawyer, the number of lawyers authorized in legal cases of a maximum of two persons, and then the conditions of the lawyer, the scope of the authority of the attorney and the need to specify the powers of attorney attorney, the issue of the dismissal or resignation of a lawyer, The need for the presence of lawyers has been expressed at the various lawyers' hearings.

3.2 Article 31 of the Civil Procedure Law: "Each of the individuals may elect and appoint at least two attorneys."

This article represents the right of each party to choose a maximum of two attorneys. Now, if one of the most likely to choose more than two lawyers, according to the lawyer's contract, the first two are known as a lawyer, and if the contract can not be arranged, no one will be notified to the client by notifying the client if he does not specify two of them. His lawyers are not recognized (mohajeri, 1390, 173).

The discussion of the number of lawyers in jurisprudence has also been detailed. The jurists accepted a number of lawyers without limitation. Contrary to the rules of the law that, after accepting a lawyer's number, the number of lawyers has expressed an acceptable amount of lawyers. But, in the case of the number of lawyers to decide on how they should function, do they necessarily have to do both attorney's attorney's attorneys and to attend trials? Or is the presence of one of them sufficient? In the answer, it should be said that the lawyers' interaction in law depends on the will of the client, whatever the client declares, that lawyers will be obliged to act in the same way. The law of civil procedure regarding the permission of the number of lawyers and the principle of their community conforms to the views Jurists, and maybe the number of lawyers on the number two is due to the lawyer's discipline and the outcome of the trials, since limiting the number of lawyers to a particular number can often lead to a hearing and disorder in the formation of hearings.

3.3 Article 33 of the Civil Procedure Law "Defendants must have conditions prescribed by law in respect of their legal representation in courts".

The rule is that the lawyers of those in the courts have been admitted to having a formal lawyer (mohajeri, 2011: 176).

Since the lawyer is a legal act, the lawyer should have the general conditions of lawyer, as expressed in Articles 190 and later and 656 of the Civil Code, that Article 190 of the basic conditions for the validity of the transaction, including the intention and the consent of the parties, the domicile of the parties , The subject matter that is traded, and the legitimacy of the transaction, and the subsequent material describes and describes the terms in question.

Also, according to the Independence Bill of the Attorney of the Attorney of the Year of 1333 and Article 2 of the Law on the Quality of Attorney Licensing of the Attorney General of the Court, 76 other conditions required for the lawyer of the court, including the possession of a Bachelor's Degree or above the law or jurisprudence, and the basics of Islamic law or the equivalent of seminary courses And a university with moral, religious and political qualifications (zeraat, 2007: 165).

In fact, Article 33 of this law is one of the most important elements of the civil procedure in the lawyer's part of the laws that limits the discretion of individuals to choose a lawyer, with the lawyers of the parties having to meet the conditions laid down in the law and maybe one of the main arguments about The lawyer is to what extent limiting the will of individuals to choose a lawyer is compatible with legal and legal principles.

The jurists mentioned the conditions for soliciting lawyers for a lawyer, some of which are a necessary condition for the authenticity of the marriage contract, and those conditions that are required in the parties, such as puberty and wisdom, and others, are mentioned as prerequisites. Although legal education and licensing lawyers are issues that have arisen in terms of innovation and advancement of human societies, the conditions that have been mentioned by the lawyers as jurists can be consistent with these new conditions. The jurists have identified six conditions as essential to a lawyer: puberty, intellect, intention, authority, Islam, and that they have the ability to practice lawfully and reasonably. However, non-mandatory conditions for the lawyer are that the lawyer should have a comprehensive insight into the subject of the lawyer, and knowledge and knowledge about the word to which the conversation is to which the renowned jurists have referred to these terms as a prerequisite for prosecution (Allameh Helli, 2, 352).

The famous comment of the jurists is that the lawyer has a complete and complete insight into the matter of lawyer, and the world is literally and verbally about the subject of lawyers. Ibn Bradj has taken into account the necessity of these conditions, and the necessity of these conditions is also apparent from the appearance of the

Word of Abil-Salah (Sabzevari, 2006: 131). With the consideration of the above, it becomes clear that what has been said in Articles 32 and 33 of the Civil Procedure Law regarding the right of a lawyer to acquire academic competence and the ability to perform a lawyer is mentioned by other expressions in the jurisprudence's discussions.

Article 35: "Procurement in courts shall include all the powers of the court of law other than that which the client has made an exception or which is in contravention of law, but in the following cases the authority of the attorney shall be specified in the power of attorney:

1. Attorney for objection to the appeal, appeal and restitution proceedings
2. Lawyers in compromise and compromise
3. The lawyer in the claim of forgery or denial and doubt about the document of the party and the extradition of the document
4. Lawyers in locating the fork
5. The lawyer in referring the dispute to arbitration and appointing the referee
6. Lawyers in Tokelau
7. Lawyers in the appointment of Mossadegh and the expert
8. Attorney for damages
9. Attorney for returning a petition or a lawsuit
10. Attorney at a third party hearing and defending a third party
11. Attorney for third party entry and defense third-party lawsuit
12. Lawyers in counter-actions and defense against them
13. Lawyer in claim of sentencing
14. The lawyer accepts or dismisses the oath

Note 1- The reference to the numbers mentioned in this article is not specified without mentioning the subject matter.

Note 2- Oath, testimony, confession, lan, and law can not be abandoned. "

Article 35, which expresses the authority of the attorney, mentions, at the top of it, the absolute authority of the lawyer in the hearing, in the sense that, when the client has chosen a lawyer in the case of hostility and litigation, the attorney has all the powers of attorney in the matter Unless a case has been exempted by the client, the client may at any rate limit the authority of the attorney because the assignment of a lawyer to a person in relation to a matter of non-compliance with the authority of the client will not apply. In spite of this, the legislator has stipulated two powers of attorney by the lawyer for some of the powers of the court, and if it is not specified, the attorney will have no authority to do so, and in fact, if any of the cases referred to in Article 35 It is not stated in the lawyer's letter that the item has been exempted by the client.

According to this article, it is necessary to say that the powers of the court on the prosecution are the powers that the client is a genuine person for the defense and prosecution of the case, and the word authority does not come to the court's abilities and powers. Also, if the client declares in the lawyer's discretion that the attorney He has the powers of Article 35 of Article 35. Such a declaration will be ineffective because, according to Note 35, each of the four powers must be specified in the Power of Attorney (Migrair, 1392: 1, 171).

Article 35 of the Civil Procedure Code should be understood as referring to material based entirely on jurisprudence, in particular Note 2 of this article, which refers to cases that are not arbitrary. The head of the matter has accepted the absolute competence of the lawyers, that if one person was given a lawyer and the lawyer was absolute, such a proxy would include all the powers of the court, that is, every choice that the client had, by choosing a lawyer and giving the lawyer absolute power of attorney Except for those cases where the client himself has been an exception or if they are in such a way that they are unlawful. These two points are the legal principles of the law.

Some people have argued that lawyers in cases that are not rationally impossible or prohibited by law are not flowing; therefore, in cases such as usurpation and theft of lawyers, they are not correct, or in the case of which the guardians are obliged to take it out of a certain steward, the law is not correct, such as worship except in worship Exceptions have been made, such as obligatory Tawaf or Tawaf prayers, and lawyers in conflict and right (Sabzevari, 2006: 128).

Note 2, article 35, has mentioned some of these examples and maybe the choice of these examples of cases in which lawyers are not allowed due to their legal and civil nature, and these are closely related to the subject of civil procedure. But for the general lack of permission of the lawyer of these affairs is that all of these affairs are special to a particular person and, in terms of their particular nature, are not viable, and the general jurisprudence's general jurisprudence does not conform to the fact that the lawyer must be delegated.

A: Attorney in swearing

The demand for an order is forbearing. A lawyer can swear a party in a lawsuit, but the attorney can not swear allegiance to a clerk, and the wording of note 2 of article 35 of the Civil Procedure Law is not void.

The Civil Code states in Article 1330: "The demand for an order is arbitrary and the lawyer can swear a party in the lawsuit, but swearing is not arbitrary and the attorney can not swear in lieu of the client.

And these two judgments, which may be abandoned by the oath of allegiance and the immorality of the principle of oath, are included in Article 35, since paragraph 14 of this article constitutes one of the matters which it considers necessary to have the power to accept or reject an oath, and in Note 2 This article considers the principle of oath to be unimportant.

B. Attorney in martyrdom

Testimony is the expression of a sense that the witness has seen with his own eye, therefore, it is impossible to transfer the senses to another because the lawyer denies the inherent attribute of the testimony and that the lawyer represents from the client is not a martyrdom (mohajeri, 1: 173) .

Some jurisprudents have also stated that the lawyer's mistreatment is untrue from his client. Abu Yousuf has said of the jurists: since the lawyer is a clerk, his testimony is not in the interest of the client, but this does not exist in the witness's testimony against the client (Sarakhsi, 1410: C 7, 106).

C: Attorney in confession

In the case of confession, confession is to say that the news is for a non-at his own right. This is unacceptable. Of course, there is no consensus among the jurists on the lack of legal representation in the consensual confession. Some have stated the lack of accountability in the confidentiality of the law, and some have accepted it, and the other category has questioned the validity of the lawyer's confidentiality. It is quite correct that the confession of the Tokel is not correct, since the confession of the news of the right to which it is required to be, and also because of the hadith of the confession of al-'Aghala'Ali al-Fafshem Da'ez, the scholars agree that the hadith implies in its conception that it does not accept Confession to someone other than herself. In contrast to the promise of Sheikh Tusi, in the extensive and unfair terms that Tokel allowed confession, the truth is that Tokel is not a confession in the confession because it is a confession of news and Tokil is an essay and the term " News and articles are not used because news is likely to be truthful and false, but this is not the case (Ibn Fahd Helli, 1407: 44).

D: Lawyers in Laan

Lana is a special marriage between husband and wife and its effect is either the negation of the limit or the negation of the child and luna in two legitimate cases. First, the husband gives his wife the proportion of adultery. The second is to deny the child who was born in his marriage and say that this child is not from me while he may be, and the reason for not having a lawyer in Lahan is the same as being a legal person, and his husband A special omen must be taught to fulfill Lāban, and on the other hand, it is a kind of swearing and swearing that it is mentioned that swearing and swearing is not viable. The rule concerning cases in which lawyers are not allowed is that the intention of the lawyer to have the verb been committed in the form of stewardship, including swearing and vowing and proclaiming them (Mohaghegh Helli 1988: 2, 428)

E: Lawyer in Ilaa

Ilaa means an oath to the abandonment of a permanent wife, the wife of a wife who is worthy of the price, and the man swears that he will not forgive him forever or for more than four months. And the man's right to swear

is to hurt his wife. The lawyer is not correct in law and, given that it is a kind of oath, and it was sworn that it was not lawful, this general ruling would also include the law. Therefore, the law can not be abandoned and only the spouse of the wife is He can recall this special oath and oath, and it should be acknowledged that the head of Article 35 and its following Note 2 are based on the jurisprudence theory and the cases in which lawyers are not allowed. And in the lawyer's thesis, the lawyer has all the powers regarding the lawyer, and two of the two principles are excepted. And in the lawyer's thesis, the lawyer has all the powers regarding the lawyer, and two of the two principles are excepted. One is the one that the client himself has made an exception in which the other materials of the lawyer do not interfere with and can not interfere. Second: There are cases in which Takil is against the law, in which case the attorney is not entitled to take any action and practice, for example, in worship, such as fasting and prayer, or in sins that are lawless in law, lawyer can not be practicable.

3-5 Article 36. "A lawyer shall have the right to apply for the issuance of an executive letter and prosecution of the operation and for the conviction and distinction of an individual named in the name of the client as specified in the lawyer's promise."

Article 36 of the Civil Procedure Code is in accordance with the jurisprudential principles and that the lawyer can act within the limits of the authority given to him and that the lawyer, in accordance with this provision, after the court sessions and the issuance of a ruling, can, in case of follow-up, file the client Applying for the issuance of an executive letter and prosecution of its operation and sentencing, which is permitted by the client. The Civil Code states in Article 663: "A lawyer can not do anything that is outside his lawyer's jurisdiction." In the jurisprudence of the jurists, it has been stipulated that the lawyer should not exceed the limits prescribed for him on the side of the lot and the defects, except those that are commonly in the scope of the lawyer (Shahid Thani, 1412: 2, 17).

3-6 Article 37: "If the client deletes his lawyer, he must inform the court and the attorney. The dismissal of a lawyer will not prevent the trial. Oral Removal of the Attorney must be made at the meeting and signed by the client. "

This article, which in fact represents the nature of the lawyer's contract, and that it is permissible to enter into a marriage contract, each of which attorneys and attorneys may terminate it at any time, and the client has the power to dismiss the attorney at any time, but this option means It is not necessary to exclude a lawyer from a particular rule, but also in legal texts. It is necessary to declare a deportation to a lawyer and a court because the impossibility of declaring the dismissal of a lawyer to him and the court will cause chaos and harm, as it may be after Uninstall and, before advising the lawyer, actions on the issue of a lawyer that their invalidity and failure to arrange the effect on the actions He may cause damage to the client or others.

3-7 Article 38: "Unless the dismissal of the lawyer is not known to him, his actions in the lawyer's office, as well as the communications provided by the court to the lawyer will be effective in the right of the client, but after the court's notice of the dismissal of another lawyer, he will Do not know about the lawyer's case ".

The dismissal of the lawyer by the client must be notified to the lawyer, otherwise the actions of the attorney will be recognized as valid for the lawyer's office. The failure of the lawyer's actions is due to the date the court informs the lawyer about dismissal. Therefore, if the lawyer has taken any steps before this date, it will be effective for the client, but if, after the date the court informs you of the detention, it will be ineffective for the client.

Article 38 emphasizes that attorney's dismissal should be announced to him in any case, otherwise, the actions of the lawyer will be valid and valid within the limits of the powers conferred by the power of attorney. Therefore, in the event of written or oral dismissal and the establishment of a panel in the court, the client must be notified and notified to the lawyer. Otherwise, legal action will be taken against the actions of the attorney. The question now is that the announcement by the court of the dismissal by the court of an advocate influences the actions of the attorney at the time of the imprisonment. In response, it should be stated that, according to Article 38, if before the action of the lawyer of the court has been informed of his dismissal, the actions of the attorney ineffective And if after the lawyer's action the court informed that the client had dismissed her before the lawyer's action but did not inform her, the lawyer's actions would be effective against the client (Mohajeri, 2015: 1, 179).

3-8 Article 39 "If the attorney informs the court of his resignation, the court shall notify the client that he or she will personally or by a new attorney to prosecute the proceedings and the proceedings will be suspended for a maximum of one month until the client's recall or the appointment of a new attorney. A petition has been filed. In case of resignation, it is obliged to inform the client about it, and then the issue of the lawyer's resignation and the notice of the defect is communicated to the client by the court, the defect is resolved by the client. "

Articles 37 and 38 required the dismissal of the lawyer to the court and the lawyer, but in Article 39 there was no such openness.

Under the terms of this article, the lawyer's resignation is not required to inform the client and the court, and sufficient information is available to the court. If the petition is filed by a lawyer, they must also inform the client. If the attorney resigns and declares his resignation only to the court, the court is obliged to inform the lawyer about the resignation of the lawyer. If, after notification of the notice of the trial, he is notified of the resignation and the client is unaware of the resignation and the hearing, the court hearing is resumed due to a defect.

Articles 37, 38 and 39 of the Civil Procedure Act are based on the nature of the lawyer's contract. Article 37 expresses the authority of the client to dismiss the lawyer and the need for the removal of the lawyer to the court and the lawyer and, furthermore, the dismissal of the attorney does not prevent the prosecution from proceeding and will continue with the dismissal of the lawyer. The authority of the client is to dismiss the lawyer in terms of the nature of the lawyer's contract, because the lawyer is entitled to conclude contracts, each of the parties has the right to terminate it. The issue is that if the client has the power to declare the dismissal of the lawyer and assume The jurists' consensus is that the lawyer will not be dismissed, but if the client does not have the ability to dismiss the lawyer and dismiss him, then the lawyer will be dismissed, disagreement And the researcher believes that the lawyer should not be dismissed in this assumption (abi mohaghagh, 1415: 37).

The jurists have considered the reason for not dismissing a lawyer if he is not informed about the deportation. Some jurists have objected to the fact that the failure of the lawyer to dismiss the lawyer if he does not know about dismissal is in conflict with the lawfulness of the lawyer who answered these forms. There is no doubt that the termination license is indisputable, but the condition for the termination of the law is the termination of the lawyer, and if the condition is not obtained in the absence of knowledge, the conditional condition will not be obtained.

Article 39 is related to the dismissal of a lawyer by him or her, or the resignation of a lawyer, in the light of the permissibility of a lawyer's attorney's right of such a right, and in the event of the announcement of the dismissal and resignation of the lawyer to the client in the termination of the contract of representation, there will be no ambiguity and, Delegation of the attorney to the court is still terminated and the court is obligated to notify the client of the lawyer's resignation in terms of respecting the client's rights and preventing the entry of the damage and losses, and the proceedings will be stopped until the client's visit or the appointment of another lawyer for one month.

3-9 Article 40 "In the event of the death of a lawyer or resignation, or the dismissal or prohibition of or suspension of his lawyer or detention, the hearing shall not be delayed if no explanation is necessary, and, in the case of need, the court shall specify the terms in the minutes, and By mentioning the explanations, the client will notify the client personally or by a new attorney at the appointed time to explain. "

What is understood from Article 40 is that the absence of a lawyer for the reasons mentioned in this article will not result in an expiry of the time of the hearing, and the said article is fully consistent with the jurisprudential standards and the sentence in this article is based on the fact that in the event of a prosecution Each of the factors that would invalidate the lawyer's contract is that if the explanation is not necessary, the proceedings will not be delayed because the voter has not played a role in the prosecution due to the voidness of the other lawyer's legal representation and, in the context of the proceedings and the suit of the client, the court will consider the claim of the client and He will decide on issues related to him and will issue an appropriate order and void the contract Lawyers will not prevent a court decision. However, if the explanation of the case and the subject of the case is necessary, the court will inform the client that he or she will be personally or by a new attorney to explain it. Because the case is a client and continues with the client and the genuine person, because with the lawyer and the lack of authorization of the lawyer, the client and the genuine person can pursue the proceedings. And having a lawyer prevents the client from pursuing the lawyer's case.

10.3. Article 44 "If one of the parties to the lawsuit filed two attorneys and none of them has been individually entitled to submit a bill by either or the presence of one of them by the receipt of the bill from another lawyer It is enough for the court to hear the case and if the bill is not received, the lawyer will abstain from trial, regardless of the views of the current attorney. If both the attorney or one of them has issued a valid excuse for not being present, the reopening session and the reason for the reopening and the time for the client's trial will be notified if necessary. In this case, the next court hearing will not be renewed due to the absence of a lawyer. "

Article 44 of the Civil Procedure Law is based on the jurisprudential principles and principles, since on the basis of jurisprudence, the client has the right to have multiple lawyers, and in the case of multiple lawyers, the principle is that all lawyers should be present at the hearing, unless the client himself has the right to take

individual action And if the lawyers have not been given such a right, their solitary presence will be the absence of all lawyers, and the court will not affect the presence of a lawyer individually, and this ruling also states in the jurisprudence's views that if two He chose a lawyer and agreed to work together or absoluteness and did not say anything. They can not do anything alone, and if one of the lawyers dies, the lawyer will be null and void and the ruler can not attach Amini by the death of one of them, and it is the same if one of the lawyers is absent (Allamah Helli, 1413: C 2, 352).

III. CONCLUSION

The consideration and consideration of the materials of the Code of Civil Proceedings and Civil Cases in relation to the representation of cases in lawsuits indicates that the legislator has, in his legislation, observed the jurists' views on jurisprudence in matters of jurisprudence and what is in the form of Legal material such as accepting multiple lawyers, meeting the lawyer's requirements, having specific conditions in the lawyer's office, empowering the attorney in the lawyer's mandate or complying with specific arrangements regarding the dismissal of a lawyer is all in line with that That the consensus of the jurists or at least the theory of most of them conforms to it. Therefore, it must be acknowledged that the articles of the Code of Civil Procedure of the General and Revolutionary Courts in civil affairs are in accordance with the views and views of the great jurists, and, in particular, they have clear legal principles.

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