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## The Negative Consequences of the Phenomenon of the Slow Pace of Litigation in Administrative Judiciary in Egypt

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### Abstract

*No one can deny that "The Phenomenon of the Slow Pace of Litigation" expands to include all wings of the judicial system, Civil, Criminal, and Administrative Issues. And extends deeper to affect all categories of litigants: Rich and Poor, men and Women. To paint a dark picture of what could be called a "Crisis of Justice in Egypt". The Supreme Constitutional Court has stated that: "The denial of the right in judicial reconciliation whether through prevention or putting obstacles or presenting it in a slow way without justification or enclosing it with faulty procedures. All this is nothing but wasting the prevention stated by constitution and law on the rights claimed to violate it and destructing the justice in the essence of its characters and the tiniest aspects especially when the way of judicial cassation to restore matters to its course is prevented or of no avail". So, The delay of litigation procedures for feeble reasons leads to losing the right of citizens and making those whose rights have been devoured resort to violence instead of using legal ways which can last for years. Therefore, this study will review some of the negative Consequences of the phenomenon of slow pace of litigation in Administrative Judiciary in Egypt.*

Keywords: Slow Pace of Litigation, Crisis of Justice, Phenomenon, Litigation, Administrative Judiciary, Egypt

### A. Introduction:

The phenomenon of delay in litigation is considered one of the most important topics which researchers should care <sup>1</sup>. This research has affirm belief that the right of litigants and enabling individuals to practice it and facilitating it is considered the first step of the way of social and economic establishment of all individuals in Egypt <sup>2</sup>.

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<sup>1</sup> **"The phenomenon of the slow pace of litigation is the basic problem in the judicial process at the present time"**, Dr. Talaat Mohammed Dwidar, *Judicial Declaration, The Value of Time in Litigation, Comparative Study*, (Legal Books, Monshat Al-Maref, Alexandria, 2002), p. 3.

<sup>2</sup> Dr. Khalid Serry Seyam, *The Right of Litigation Ensuring The Economic Rights for Poor People*, (paper presented to the Conference of Legal Empowerment of the Poor in Egypt), the

The first supposition of justice necessitates and guarantees the right of citizens to resort to their usual judge to prevent the aggression on their rights<sup>3</sup>, freedom and what can lead to getting their judicial equity<sup>4</sup> within a reasonable period without unreasonable delay<sup>5</sup>. It is not enough to mere state whether in constitution or law, the right of persons to resort to his judge in his suitable time<sup>6</sup>. It is a must that the litigants should feel that justice is within reach and this cannot be attained except one can get his right in the least time and in the least expenses<sup>7</sup>. Justice is not only conveying the right to its owner but also conveying it on two conditions: (1) in the nearest chance. (2) in the best way, namely, this must be done easily and without difficulties along with a period of time enough for preparing the means of avocation<sup>8</sup>.

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Egyptian Center for Economic Studies, Al-Ahram, Year 126, no. 2029, Monday: 26 November 2007.

<sup>3</sup> **"The short phrase" Access to Justice" means, or includes, access to courts and tribunals involved in the delivery of justice. Justice, as so administered, has to be available to all, on an equal footing"**, Hon Russell Fox, *Justice In The 21<sup>st</sup> Century*, (Cavebdish Publishing Limited, First published, 2000), p. 81. See also: Deborah R. Hensler: *The Globalization of Class Actions: An Overview*, Annals of the American Academy of Political and Social Science, Vol. 622, March 2009, p. 7. "The author refers to the need for access to justice as a fundamental human right".

<sup>4</sup> Max J. Skidmore- Marshall Carter Tripp, *American Government: A Brief Introduction, how America control*, translated by: Dr. Nazmi Luka, (Matboat Ketaby, printing press, Cairo, 1984), p. 222.

<sup>5</sup> Dr. Ahmad Sdky Mahmoud, *Scope of the Law of Dispute Resolution No. 7 of 2000, Critical Analysis*, (Dar Elnhda Alarabeah, 1<sup>st</sup> Edition, 2002), p. 5, 8, Dr. Amr Ahmed Hassabo, *Conciliation Committees in the Light of the Provisions of Act No. 7 of 2000*, (Dar Elnhda Alarabeah, 2000), p. 5, Dr. Mohammed Suleiman Mohammed Abdul Rahman, *The Judge and the Slow Pace of Litigation, in Accordance with the Provisions of the Code of Egyptian and Comparative Law*, (PhD Thesis, Faculty of Law, Tanta University, 2011), p. 6, see also: Roderick A. Macdonald, *Access to Justice and Law Reform Number 2*, Windsor Yearbook of Access to Justice, Vol. 19, 2001, p. 319, GERRY L. ALEXANDER, *Access to Justice: A Justice System Imperative*, Washington State Bar News, Vol. 62, Issue 5 May 2008, p. 16- 18.

<sup>6</sup> Dr. Ahmad Sdky Mahmoud, *Defendant and the Slow Pace of Litigation*, (Dar Elnhda Alarabeah, 1994), p. 5, Dr. Tharwat Abdel Aal Ahmed, *Conciliation Disputes of Public Legal Persons in Accordance with the Provisions of Law No. 7 of 2000*, (Dar Elnhda Alarabeah, 2004), p. 10, Dr. Mostafa Metwally Kandel, *The Role of Parties of Contract in Settlement of Contract Disputes, A Study on the Dispute Settlement Contract Clauses*, (Dar Elnhda Alarabeah, without years of publishing), p. 12, Dr. Mohammad Sabir Ahmed Damiry, *The Role of Computer in Facilitating Litigation*, (PhD Thesis, Faculty of Law, Tanta University, 2012), p. 91, See also: *Defining the Goal: Access for What? To What? How Much? And Who Should Decide?* Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 2004 Symposium Articles, Georgetown Journal of Legal Ethics, Vol. 17, p. 372.

<sup>7</sup> **"Time is part of the justice, justice is not giving any right, but give everyone right in time"**, Dr. Talaat Dwidar, *Judicial Declaration, The Value of Time in Litigation*, op. cit., p. 3.

<sup>8</sup> Mohammed Ismail Awad, *Summary of the Code of Civil and Commercial Procedure*, Part 1: Books I and II of the Code, (Dar Elnhda Alarabeah, 1967), No 128, p. 175, Mohamed Abdelnaby Elsayed Ghanem, *Reasons for Establishing the Economic Courts in Egypt*, The

The delay of justice is not only a kind of aggression which can be more difficult and painful than losing the dispute or depriving the right of litigation<sup>9</sup> but also denying it. So, it is said "Justice Delayed, Justice Denied"<sup>10</sup>.

The need to justice is an innate feeling that all humans need when their rights are violated or devoured<sup>11</sup>. So, the fulfilment of justice satisfies such a need<sup>12</sup>. It is a human need exactly as the need for warmth or shadow<sup>13</sup>.

Justice in front of judiciary is like a guard for those who fear and like a shelter for the wronged.

A contemplation of the temporary reality concerning guaranteeing the right of the Egyptian citizen to resort to judiciary shows a painful fact that reflexes a real crisis regarding this right<sup>14</sup>. It includes all ways of judicial system whether being Civil, Criminal<sup>15</sup>, Economic and

Macrotheme Review, A Macrotheme Capital Management, LLC, Austin, United States, Vol. 3 Issue 7, Special Issue July 2014, p 167.

<sup>9</sup> Dr. Nabil Ismael Omar, *Loss Procedures and the Economics of Loss It, Study in Civil and Commercial Procedure Code*, (Law Library, Dar Algama Algedada, Alexandria, 2008), p. 55, Ahmed Ibrahim Ali, *Judicial Organization Between Reform and Revolutionary Change, Conference of Revolution andL*, Faculty of Law, Alexandria University, 21-22 December 2011, (Majallat Al-Hoqouq); Legal and Economic Research Journal, Alexandria University, December 2011, p. 169.

<sup>10</sup> *Justice Delayed is Justice Denied; A Case for A Federal Employees Appeals Court*, First Session, November 9, 2005, U.S Government Printing Office, Washington 2006, p. 74. Betty Boles Ellison, *Justice Delayed, Justice Denied*, (Infinity Pub, 2008). Donald L. Carper, John A. McKinsey, Bill W. West, *Understanding the Law*, (Cengage Learning, 2008), p. 188. Frank Mwela, *Justice Delayed Is Justice Denied Principle: Tanzania Primary Courts: The Case Study Of Iringa Municipal*, (LAP LAMBERT Academic Publishing, March 2013).

<sup>11</sup> Leded Abdal, *What are the Reasons of Slow Pace of Litigation*, Syria Courts, Available at: [http://syria-court.com/readnews.php?sy\\_seq=16870](http://syria-court.com/readnews.php?sy_seq=16870)

<sup>12</sup> Max J. Skidmore- Marshall Carter Tripp, *American Government*, op cit, p. 214.

<sup>13</sup> Dr. Talaat Dwidar, *Judicial Declaration, The Value of Time in Litigation*, op. cit., p 3, Deborah R. Hensler, *The Globalization of Class Actions*, op. cit., p 7. See also: "Slow Justice Injustice" Abdul Malik Abdullah Al-Gandary, *Developing Procedural Laws to Facilitate the Proceedings*, Judicial Research Journal, The Technical Office, Supreme Court, The Republic of Yemen, Issue 10, November 2008, p. 145, Ghanem, Reasons for Establishing the Economic Courts in Egypt, The Macrotheme Review, op.cit., p169.

<sup>14</sup> Dr. Hamid Abu Taleb, *The Egyptian Justice System Under Sharea Law*, (Dar Elfekr Al-Araby, Cairo, 1993), p. 66, Statistics indicate that approximately fifteen million casein courts, each four Egyptians have a case in judiciary, in fact it's scary problem in all metrics", Dr. Ahmed Sawy, *The Intermediate Explanation of Civil and Commercial Procedure Code, Amended by Law No. 76 of 2007*, (Without a Publisher, 2008), p. 91, Mohamed Fahim Darwish, *Rules of Civil Justice in The Light of the Legal and Judicial Principles*, (Without a Publisher, 2007), p. 15.

<sup>15</sup> **For Farther Information:** Mohamed Abdelnaby Elsayed Ghanem, "The Negative Consequences of the Phenomenon of the Slow Pace of Litigation in Criminal Judiciary in

Commercial Issues<sup>16</sup> or Administrative. Further, it affects all kinds of litigants being Rich or Poor, Strong or Weak and Men or Women. It draws a dim picture for what we can call "The Crisis of Justice in Egypt"<sup>17</sup>.

The supreme constitutional court has stated that: "The denial of the right in judicial reconciliation whether through prevention or putting obstacles or presenting it in a slow way without justification or enclosing it with faulty procedures. All this is nothing but wasting the prevention stated by constitution and law on the rights claimed to violate it and destructing the justice in the essence of its characters and the tiniest aspects especially when the way of judicial cassation to restore matters to its course is prevented or of no avail"<sup>18</sup>. The SCC has also stated that: "The right of litigation cannot be completed unless the legislator provides the judicial antagonism, at the end, with a just solution representing the judicial reconciliation which its demander deserves"<sup>19</sup>. It also stated that: "The right of litigation stated in constitution should

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*Egypt*" paper presented at "Batumi International Conference on Law and Politics", Batumi, Adjara, Georgia, August 23-24, 2014.

<sup>16</sup> **For Farther Information:** Mohamed Abdelnaby Elsayed Ghanem, "*Establishment of Economic Courts in Egypt*" paper presented at The European Conference on Politics, Economics and Law 2014", The European Conference on Politics, Economics and Law 2014, "Individual, Community & Society: Conflict, Resolution & Synergy", Thistle Brighton, Brighton, East Sussex, United Kingdom, Thursday- Sunday, July 3-6, 2014.

- Mohamed Abdelnaby Elsayed Ghanem, "*Reasons for Establishing the Economic Courts in Egypt*" paper presented at The Macrotheme International Conference on Business and Social Science, Grand Hotel Park, Dubrovnik, Croatia, August 4-5, 2014.

- Mohamed Abdelnaby Elsayed Ghanem, "*The Benefits of Economic Courts in Egypt under Law No. 120 of 2008*" paper presented at Annual International Conference on Law, Economics and Politics, Green Templeton College, University of Oxford, United Kingdom, September 1-3, 2014.

- Mohamed Abdelnaby Elsayed Ghanem, "*The Proposals of Developing the Case Preparation Panel In Economic Courts In Egypt*", International Multidisciplinary Scientific Conferences on Social sciences and Arts, Congress Centre Flamingo Grand, Bulgaria, September 2-7, 2014,

Mohamed Abdelnaby Elsayed Ghanem, "*The Negative Consequences of the Phenomenon of the Slow Pace of Litigation in Egypt: Economic and Commercial Issues*" paper presented at The Ninth Annual Conference on Empirical Legal Studies (CELS 2014), School of Law, University of California, Berkeley, U.S.A, Friday- Saturday, November 7-8, 2014.

<sup>17</sup> Dr. Ahmed Sawy, *The Intermediate Explanation of Civil and Commercial Procedure Code*, op. cit., p. 91.

<sup>18</sup> Case No. 5 of 15 Year Series, December 17, 1994 Session, The Supreme Constitutional Court, Volume No. 6, 1993- 1994, p 918.

<sup>19</sup> Case No. 15 of 17 Year Series, December 2, 1995 Session, The Supreme Constitutional Court, Volume No. 7, p 317.

associated with taking effect through removing the obstacles which prevent from settling the matters arising from the aggression on the rights stated in law"<sup>20</sup>.

### **B. Slow Pace of Litigation in Administrative Judiciary Cases:**

No doubt that, the administrative red tape, which courts suffer from, does not differ much from those in the government bodies of the state which judiciary has no relation to it<sup>21</sup>.

It is not a secret that the litigation process is not only represented in the judge in his court but also in all that can be helpful for him to do his job properly<sup>22</sup>.

The rate and type of judgments of administrative courts result from the increase of cases in administrative courts. It is the tool which the majority of citizens did not recognize to be their rights<sup>23</sup>.

### **C. Negative Consequences of the Phenomenon of the Slow Pace of Litigation in Administrative Judiciary Cases:**

The problem of Slow Pace of Litigation has bad effects on the field of administrative judiciary represented in:

- 1- The legislator has permitted the board of state commissioners, in case preparation and preparing it for procedure, to contact government and administration bodies and to demand the presence of officials to hear their testimonies and being under investigation. However, this does not happen in Egypt as the cases are postponed for years owing to preparing the reports and not preparing the case for procedure by the board of state commissioners. So it has become a cause of the slow pace of litigation<sup>24</sup>.
- 2- The state litigation authority represents the administration body and defends it legally and illegally despite the clarity of the wrongdoing. That is because it made itself under the directions of the state administration body. What makes the matter worse is that it refers

<sup>20</sup> Case No. 34 of 16 Year Series, June 15, 1996 Session, The Supreme Constitutional Court, Volume No. 7, p 765.

<sup>21</sup> Ibrahim Khalifa Melad Atiya, *Means of Settling The Disputes of Administrative Contracts, Comparative Study*, Master Thesis, Faculty of Law, Tanta University, Egypt, 2010 - 2011, p d, p 355.

<sup>22</sup> **The misuse of the right of litigation by legal persons.** Ahmad Al-Kotb Shorba, *Abuse of The Right to Litigate, A Comparative Study Between Islamic Law and Legal Systems Situation*, PhD Thesis, Faculty of Law, Tanta University, Egypt, Without Year of Publication, p 321 etc. Fathi Lasheen, *The Delay of Settling The Disputes And Its Consequences*, op. cit., p 7.

<sup>23</sup> Fathi El-Sarawi, *Delays in the Appeals Prolong Litigation*, Justice Guards, Algomhuria Newspaper, March 14, 2009, Available at:

- <http://www.gom.com.eg/algomhuria/2009/03/14/accedents/detail04.shtml>

<sup>24</sup> Abeer Al-Damarany, *Justice is Slow in Council of State, Dealing With Clerks Equitably After Their Retiring*, Investigations, Al-Ahram Newspaper, Year 131, Issue 43805, Sunday: November 12, 2006, See also: Atif Al-Banna, *Slow Pace of Litigation in Administrative Judiciary*, Conference of Slow Pace of Litigation in Egypt, op. cit., p 22, Ahmad Shorba, *Abuse of The Right to Litigate*, op. cit., p 438- 439.

complaints to unspecialized courts according to the orders of the administration body to gain time and to prolong the period of dispute without right or illegally. So, it has become a phenomenon worthy of consideration by all those who are concerned with justice affairs. It should be noted that the judiciary of the Council of State has decided the maximum fine on the administration body after refusing the complaint which the court of no jurisdiction has decided its incompetence and has transferred it to the court in questioning and has reproached it owing to not respecting the honour of dispute and going against the right of litigation<sup>25</sup>.

- 3- The administration body and the board of state commissioners have lingered to apply the rule which states: "It is not allowed to hear a case for a second time for the same reason without justification"<sup>26</sup>. This is contradictory to the general origin stated in article 98 of the Civil and Commercial Procedure Law No. 13 of 1968<sup>27</sup>. The jurists of general law have built an important result, if taken by granted; it will avoid the slow pace of litigation in administration disputes. This result is: "If the administration has refused to present the writs or documents, which it owns, to the court despite postponing the case more than once, it will be considered a presumption that the allegations of the plaintiff is correct"<sup>28</sup>.
- 4- The board of state commissioners should prepare its report of the case within a limited period and should be raised to the board of the court to assign a quick session, but what actually happens is contrary to this as they do not abide by the legal text which does not allow postponing the case for more than once. Therefore the lingering of the administration of not presenting the required writs and documents is considered a presumption that the allegations of the plaintiff are correct. No doubt that the implementation of this presumption will restrict the aggression of administration and keep the rights of the litigants.
- 5- The circuit of examining the objections in the supreme administrative court does not perform its duty properly as it checks the objections presented to the administrative court and decide, without showing reasons, to refuse or accept the objection. Some jurists have truly stated that: "the circuit of examining objections has been contradictory to the constitution as it is a setback to the rights of the litigants"<sup>29</sup>.
- 6- The refusal of the administration not to execute judgments leads to violating the value of judgments of judiciary and being contradictory to the conclusiveness of the matter being judged. It is contradictory to the law on which the judgment was based. That is because the final judgment being not executed is contradictory to law and the government is responsible for the compensation. Further, it is not befitting for a government in a civilized country not to execute final judgments<sup>30</sup>. This contradiction of law leads to

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<sup>25</sup> Ahmad Shorba, *Abuse of The Right to Litigate*, op. cit., p 439- 441, Mohamed Suleiman Abdul Rahman, *The Judge and the Slow Pace of Litigation, In Accordance With the Provisions of the Code of Egyptian and Comparative Law*, PhD Thesis, Faculty of Law, Tanta University, Egypt, 2011, p 353 etc.

<sup>26</sup> Ahmad Shorba, *Abuse of The Right to Litigate*, op. cit., p 443.

<sup>27</sup> Article No. 98 of Civil and Commercial Procedure Law No. 13 of 1968 states that: "It is not permissible to postpone the case more than once for the same reasons that goes back to one of the litigants and that it should not be postponed for more than 3 weeks".

<sup>28</sup> Atif Al-Banna, *Slow Pace of Litigation in Administrative Judiciary*, op. cit., p 22.

<sup>29</sup> Atif Al-Banna, *Slow Pace of Litigation in Administrative Judiciary*, op. cit., p 23.

<sup>30</sup> Ahmad Shorba, *Abuse of The Right to Litigate*, op. cit., p 324- 325.

spreading chaos and losing the confidence of the sovereignty of law. And this was asserted by the supreme administrative court <sup>31</sup>.

- 7- The administration bodies use the execution complications as soon as the administrative judiciary court issue its judgment in front of the execution judge in usual courts aiming at prolonging the term of decision in disputes <sup>32</sup>. As a result, the execution judge gives the decision of judiciary incompetence to hear execution complications in administrative courts <sup>33</sup>. Thus, this final decision is jurisdiction incompetence and then referring the case to the court of jurisdiction according to article No. 110 of the Civil and Commercial Procedure Law No. 13 of 1968 <sup>34</sup>. This final judgment does not actually take 2 or 3 days. Further; it takes months and makes the matter even worse on both parties of the case <sup>35</sup>.
- 8- The administration resorts to unspecialized courts knowing that the objection in the supreme administration court does not mean non execution as this necessitates a judgment of non execution. So, the administration is no longer an honest litigant and this act leads to the slow pace of decision in disputes <sup>36</sup>.
- 9- The resort of the administration to cassation not to execute it on front of jurisdiction incompetence leads to not fulfilling judicial judgment <sup>37</sup> despite the existing of board of the state commissioners to defend the interests of the administration and giving advice

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<sup>31</sup> Court of Administrative Judiciary: Case No.133, February 7, 1951, Group of Council of State, 5<sup>th</sup> Year, p 584, Administrative Judiciary on June 16, 1952, 6<sup>th</sup> Year, p 438, Court of Administrative Judiciary, July 22, 1954.

<sup>32</sup> The court of administrative judiciary has decided, in the Case No. 6373 of the year 50 judiciary, Session No. 6, August 1996, the commitment of the administration to execute judgments is a sign of a civilized country and it is not befitting not to execute judicial judgments as this contradiction will lead to spreading of chaos and the in confidence of the sovereignty of law.

<sup>33</sup> Counselor Zakariya Abdul-Aziz commented on this by saying "I cannot understand the reason why the administration shows an excess of the complications of execution in front of the judge of urgent matters though there is a presumption of jurisdiction of subject matter. If the lawyer is allowed to do that for the good of his client, it is not allowed for the administration to do the same and hinder the course of justice, Zakaria Abdul Aziz Comment on the paper of Atif Al-Banna, *Slow Pace of Litigation in Administrative Judiciary*, op. cit., p 31.

<sup>34</sup> Article No. 110 of Civil and Commercial Procedure Law No. 13 of 1968 that: " The court, having not the jurisdiction of matter, should refer the case to the court of the subject matter and it can decide a fine not exceeding 200 pounds and the new court should hear the case".

<sup>35</sup> Atif Al-Banna, *Slow Pace of Litigation in Administrative Judiciary*, op. cit., p 23.

<sup>36</sup> The administration should execute the judgments by itself. That is because it is banned to use the usual ways of execution against it. The case presenter complains of the procrastination of the administration in the execution accordingly. This is contradictory to the constitution which states the sovereignty of the law, Hala Al-Minshawy, *Experts of Law Make A Road Map to Coerce The Government to Execute The Judgments of Administrative Judiciary*, New Egypt Magazine, August 3, 2009, Available at: <http://www.misrelgdida.com/index.php?news=1824>

<sup>37</sup> Jurists of the French administrative judiciary considered the commitment of the administration to execute the administrative judgments coercively is one of the miracles of the administrative judiciary.

and directing it to the execution of judgment or cassation following the legal ways stated by the supreme administrative court <sup>38</sup>.

- 10- Citizens in charge of administrative bodies, which are a party of the case, do not feel their responsibility before Allah and then the law to fulfil the interests of those dealing with them and linger over doing them with no real excuses to present the needed documents necessary for the decision in cases and making the proofs which takes a long time to prove and decide them <sup>39</sup>.
- 11- The end of the interest of the plaintiff in his case as the interest of the plaintiff may be restricted to a specific period after which it will be of no value and the service of the clerk may come to an end before deciding an affair of his job affairs <sup>40</sup>.
- 12- One may let the dispute aside being hopeless of judiciary and lose every hope of getting his right in courts and have doubts as for resorting to judiciary and let aside the dispute out of despair <sup>41</sup> and the dispute becomes null and void at the request of the plaintiff being not heard in courts for 6 months <sup>42</sup>.
- 13- The litigant may die before he hears the judgment of his case. Many cases have taken a long time before issuing a decision and expired due to prescription limitations after the death of the one who presented the case <sup>43</sup>.

#### **D. Results & Conclusion:**

It is clear from the study of the subject: "The Negative Consequences of the Phenomenon of the Slow Pace of Litigation in Administrative Judiciary in Egypt " That:

- 1- Prolonging the period of disputes heard in courts, with all its types and classes, has led to mistrust in the judicial system itself <sup>44</sup>. As a lot of those having rights among litigants feel they cannot desist the aggression on their rights in due time and try to get them personally or be obliged to conciliate and take a part of his right, even little, or leave it altogether. It

<sup>38</sup> Atif Al-Banna, *Slow Pace of Litigation in Administrative Judiciary*, op. cit., p 24.

<sup>39</sup> Fathi Lasheen, *The Delay of Settling The Disputes And Its Consequences*, op. cit., p 7.

<sup>40</sup> Abeer Al-Damarany, *Justice is Slow in Council of State*, op. cit.

<sup>41</sup> Article No. 134 of Civil and Commercial Procedure Law No. 13 of 1968 states that: " If any one of the litigants has an interest of not going ahead in the case because of the act of the plaintiff, he has the right of deciding the termination of the dispute after 6 months since the last correct procedure of litigation. The legal text assigned the period to be a whole year, later replaced by the phrase 6 months in law No.18, 1999, Issued in the official Gazette. Edition No. 19 repeated, May 17, 1999. It has been implemented starting from July18, 1999.

<sup>42</sup> Ahmed Mohamed Abdullah, *Slow Justice in the State Council*, Available at: <http://ama2.alafdal.net/montada>

<sup>43</sup> Ahmad Abu al-Wafa, *Civil and Commercial Procedure*, 1986, p 615 etc, Ahmad Sdky Mahmoud, *Defendant and the Slow Pace of Litigation*, op. cit., p 5.

<sup>44</sup> Nabil Ismail Omar, *Loss Procedures And The Economics of Loss It, Study in Civil And Commercial Procedure Code*, Law Library, Dar Algama Algedada, Alexandria, 2008, p 55, Counselor Maher Sami, *A Call for Quicker Justice*, Constitutional Magazine, The Supreme Constitutional Court, Seventh year, No. XVI, October 2009, p 2, Mohamed Abdul Rahman, *The Judge And The Slow Pace of Litigation*, op. cit., p 6.

- has been deep-rooted in their minds that: "conciliation through taking a quarter of their right is better than litigating the whole of it" <sup>45</sup>.
- 2- There is a real crisis proved by the big numbers of disputes heard in courts, the long period needed to reach a final judgment and stated by the declared rates of the execution of decided judgments <sup>46</sup>. So, litigants have despaired of how slowly disputes are settled <sup>47</sup>. So, it has been familiar among people that: "wronged conciliation is better than a profitable case" <sup>48</sup>.
  - 3- The mistrust in the judicial procedures and the loss of the rights of litigants owing to the long period of litigation <sup>49</sup>, the increase in suffering and distracting them from taking care of their daily life as the litigant does not benefit from the wasted procedures as it is a plain loss including the actual expenses <sup>50</sup>.
  - 4- The increase of the various expenses needed to get their right including judicial fees <sup>51</sup>, the expenses of copying, photocopying and photography and the like such as stamps, fees of lawyers, clerks in courts <sup>52</sup>, brokers of judicial writs and other expenses in case litigants move to other towns where the court lies. Adding to that the stresses that can affect the litigants <sup>53</sup>.

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<sup>45</sup> Ahmad Sdky Mahmoud, *Defendant And the Slow Pace of Litigation*, Journal of Sharia & Law, Faculty of Sharia and Law, United Arab Emirates University, Edition No. 10, November 1996, footnote No. 1, p 121.

<sup>46</sup> Grossman, Joel B.; Kritzer, Herbert M.; Bumiller, Kristin; *Measuring the Pace of Civil Litigation in Federal and State Trial Courts*, 65 *Judicature* 86, 1981- 1982.

- The author states that this problem is factual and realistic and it needs more efforts to solve it and mitigate its passive effects. The author, also, published "Litigation is an expensive process and takes much time". Rand Corporation's Conference on The Pace of Litigation, Santa Monica, California, May 13- 15, 1981.

<sup>47</sup> Jay M. Feinman, *Law 101: Everything You Need to Know About American Law*, Translated into Arabic by Ahmed Amen El- Jamal, Egyptian Society for the Dissemination of Knowledge and Global Culture, Cairo, Egypt, 1<sup>st</sup> Edition, 2005, p 100- 101.

<sup>48</sup> Ahmad Sdky Mahmoud, *Prosecution of Others In Litigation In Egyptian and Comparative Procedural Law*, (PhD Thesis, Faculty of Law, Cairo University, 1991, Footnote No. 1, p 10, Ahmad Sdky Mahmoud, *Defendant and the Slow Pace of Litigation*, op. cit., p 5 and Footnote No. 3 at The same page.

<sup>49</sup> John A. Stookey, *Economic Cycles and Civil Litigation*, The Justice System Journal, Vol. 11, No. 3, Winter 1986, p 382.

<sup>50</sup> Nabil Ismail Omar, *Loss Procedures and the Economics of Loss* it, op. cit., No. 1, p 7, No. 5, p 11, Fathi Lasheen, *The Delay of Settling the Disputes and Its Consequences*, op. cit., p 4.

<sup>51</sup> Jay M. Feinman, *Everything You Need to Know About American Law*, Translated by Ahmed El- Jamal, op. cit., p 100.

**" Civil justice today is too expensive and too exclusive"**, Hon Russell Fox, *Justice In The 21<sup>st</sup> Century*, Cavebdish Publishing Limited, First published, 2000, p 81.

<sup>52</sup> Fathi Lasheen, *The Delay of Settling the Disputes and Its Consequences*, op. cit., p 4.

<sup>53</sup> Nabil Ismail Omar, *Loss Procedures and the Economics of Loss* it, op. cit., p 12- 13. About the interpretation position of the litigant loses expenses, No. 3, p 52.

- 5- The delay of the execution of judgments represents a great loss as it turns to be compound injustice as what benefits may return to litigants if the judgments are not executed owing to the long procedures of coercive execution which is too slow<sup>54</sup>.
- 6- The dispute may include persons other than the litigants such as families and the other relations specially the cases of family affairs and criminal cases whose punishment is imprisonment.
- 7- Texts of law remain silent and still till the judge states the correct meanings which legislation meant<sup>55</sup>. In case the judgments are not executed and, having the power of decreed matter and obtain the power of legal reality, it affects the judge's morale passively<sup>56</sup>.
- 8- The problem of the accumulation of cases in courts to be decided leads to the instability of judges to perform their work properly<sup>57</sup> which is considered by some as justice denial<sup>58</sup>.
- 9- The speed of hearing or reviewing cases in a session and postponing them owing to trivial reasons though the legislator does not allow postponing cases for more than once for the same reasons<sup>59</sup>,<sup>60</sup>.
- 10- Defacing the image of justice and its high costs in a world overwhelmed by materialism and devastating conscience<sup>61</sup>, moreover, judges have been liable to falling prey to faulty procedures owing to its complications, having many branches, the big number of laws and the legal tricks some litigants may resort to<sup>62</sup>.

<sup>54</sup> Ahmad Sdky Mahmoud, *The Rules of Coercive Execution in the Rules of Egyptian Procedures*, 2004, p 10, Fathi Lasheen, *The Delay of Settling the Disputes and its Consequences*, op. cit., p 5.

<sup>55</sup> "As a result, the judge was given the task of making sure that court time was used in the right manner", X.E. Kramer- C.H. Van Rhee, *Civil Litigation in a Globalising World*, (Springer, 2012), p 45.

<sup>56</sup> *Chiefs of Courts and Lawyers, The Delay of Case Settlement is Sure Injustice*, Al-Masry Al-Youm Newspaper, Issue 840, Sunday: October 1, 2006, p 11.

<sup>57</sup> Micheal D. Planet, *Reducing Case Delay and the Costs of Civil Litigation: The Kentucky Economical Litigation Project*, Rutgers Law Review, 37, 1984- 1985, p 279.

<sup>58</sup> Mostafa Metwally Kandel, *The Role of Parties of Contract in Settlement of Contract Disputes, A Study on the Dispute Settlement Contract Clauses*, (Dar Elnhda Alarabeah, Without Years of Publishing), p 9 and footnote No. 14 at the same page.

- **The supreme Constitutional Court has stated that:**" The denial of the right in judicial reconciliation whether through prevention or putting obstacles or presenting it in a slow way without justification or enclosing it with faulty procedures", Rule No. 18- 12, Case No 15, Year 17, Session December 2, 1995, the provisions of the Supreme Constitutional Court, Vol 7, p 318.

<sup>59</sup> Article No. 98 of Civil and Commercial Procedure Law No. 13 of 1968 states that:" It is no permissible to postpone the case more than once for the same reasons that goes back to one of the litigants provided that it should not exceed 3 weeks".

<sup>60</sup> Mostafa Kandel, *The Role of Parties of Contract in Settlement of Contract Disputes*, op. cit., p 11, and footnote No. 18, 19 at the same page.

<sup>61</sup> Micheal D. Planet, *Reducing Case Delay and the Costs of Civil Litigation*, op. cit., p 279.

<sup>62</sup> Mohamed Fahim Darwish, *Rules of Civil Justice in the Light of the Legal and Judicial Principles*, Without Publisher, 2007, p 7.

- 11- The frustration and loss of determination which befall the judiciary owing to a number of reasons such as the misapplication of the principle of reward and punishment, not applying the set legal rules for promotion and the annual subsidies properly. Moreover, the principle of equality in rights and duties has been violated and transferring judges on the basis of efficiency and considering the conditions of families <sup>63</sup>.
- 12- The value of oppression has become common in society and the deepening of the idea of the absence of deterrent to oppression has led to wrongdoing among people and the absence of the spirit of justice in society. In case the flags of oppression and wrongdoing have been raised, it would be an alarm of degradation, corruption and an evil ending <sup>64</sup>.
- 13- The violation of public security and the instability of the society have led to the separation of families and homeless children or children deprived of their parent's care.
- 14- The government service body has been exposed to the complications of procedures of labours, the absence of decisive management of judiciary and not applying modern ways of running such an important body among the public utilities <sup>65</sup>. This has led to little efficiency of service performance <sup>66</sup>.
- 15- The absence of the policy set for the justice to take its course and put the fixed outlines to face the probabilities of the future and its expectations and put into consideration the development and renewal of the means of work in the judicial system and applying the latest advances of science <sup>67</sup> to put the obstacles facing justice aside <sup>68</sup>. It has become usual that the growing development in the amount of work that made justice bodies unable to bear its increasing burdens and the problem of settling disputes has arisen <sup>69</sup>.

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<sup>63</sup> Abdul Malik Abdullah Al-Gandary, *Developing Procedural Laws to Facilitate the Proceedings*, Judicial Research Journal, Technical Office, Supreme Court, Republic of Yemen, Issue No. 10, November 2008, p 147 and Footnote No. 2 at the same page.

<sup>64</sup> Hussein Bin Abdul-Aziz Bin Hassan Al-Sheikh, *The Principle of the Quickness of Deciding the Case in the Islamic Law*, Justice Magazine, Ministry of Justice, Kingdom of Saudi Arabia, Second year, No. 8, Shwal 1421, p 3 etc.

<sup>65</sup> Nabil Ismail Omar, *Origins of Civil and Commercial Procedure*, Legal Books, Monshat Al-maref, Alexandria, 1<sup>st</sup> Edition, 2002, p 8.

<sup>66</sup> Ahmad Jamal Badawi, *The Case is Bigger More Than That*, op. cit., Safaa Sdky, *Causes of Slow Pace of Litigation in Egypt*, Conference of Justice and Slow pace of Litigation in Egypt, Cairo, March 23-24, 2010, p 3.

<sup>67</sup> *The Main Outline of Judicial Policy*, Report presented by the Chamber of Justice and Legislation, Natural Council for Services and Social Development, Attorney Journal, Egyptian Bar Association, Year 62, Issue No. 1-2, January- February 1982, p 7.

<sup>68</sup> *Basic Documents*, First Justice Conference, Judges Club, Cairo, Egypt, April 20- 24, 1986, p 13.

<sup>69</sup> Ahmad Sdky Mahmoud, *Defendant and the Slow pace of Litigation*, op. cit., p 7, Mostafa Kandel, *The Role of Parties of Contract in Settlement of Contract Disputes*, op. cit., p 9, and footnote No. 15 at the same page.

- **See also:** Grossman, Joel B.; Kritzer, Herbert M.; Bumiller, Kristin; *Measuring the Pace of Civil Litigation in Federal and State Trial Courts*, op. cit.

- **For farther information about negative effects of the phenomenon of the slow pace of litigation, see: Effects of waste generated motion**, Nabil Ismail Omar, *Loss Procedures and the Economics of Loss It*, op. cit., p 51- 55.

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