



The Principle of Equality of Arms, with a Comparative Look at Foreign Judicial Documents and Precedent and Iranian Civil Procedural Law

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Abstract

The principle of equality of arms, which French jurists have interpreted as the "principle of balancing the procedural rights of the parties", means that each of the parties to the proceedings can benefit from the possibility of presenting their claim in the same conditions as the other party, without the right of one or the other being wastaged. This principle has been included in the Criminal Procedure Code of France (2000) and more than it is mentioned in civil procedure, it has an aspect and history in criminal procedure. In civil and criminal proceedings, each party should be given a reasonable opportunity to provide the necessary documents to prove their claim. (Principle of equality of possibilities)

Principle of equality of arms, although very similar, but is different from the principle of contradiction. According to the principle of equality of arms, there should be a fair balance between the opportunities given to the parties present in the proceedings. If this balance is upset, the decision issued against the person affected by the non-observance of this principle; even if it is correct and according to the law, is not worthy of approval and implementation; Because the right of the person who lost the case is wastaged, which could affect the outcome of the case.

The definition of the European Court of Human Rights of this principle, is as follows: granting a reasonable opportunity to each party to express the disputed issue, so that, one party, is not placed in a disadvantageous situation compared to the other party. ... This principle is a part of the more general principle of fair trial, which is stated in paragraph 1 of Article 6 of the European Convention on Human Rights.

The principle of equality of arms, instead of being derived from the law or other written sources or the opinions of scholars in this field, is rooted in the practice of the European Court of Human Rights; Because for the first time, without any previous history in domestic and foreign legislation, was cited by one of the litigant in one of the cases of the European Court of Human Rights, and that was the case of Tadik against the



prosecutor.

Although, this principle is not stated in the law of Iran, but rays of this principle can be seen among the rights and obligations of it. The rights and obligations derived from this principle, in the Civil Procedure Code of Iran, are as follows: the balance of the rights of the parties in having the enough opportunity to prepare the defense; The duty of the court to prevent the abuse of procedural rights; Right of the parties to be informed about the proceedings; The right to have an effective legal representative and Balanced right of parties to be heard. Arising from these rights, mandatory regulations are as follows: The reasonable interval between the notification and the hearing meeting to give the defendant an opportunity to prepare a defense (Articles 64 and 73); Preventing the abuse of the right by changing address of residence in order to renew the notification for disrupting and delaying the proceedings (Article 80); Ensuring that the defendant is informed of the lawsuit (Article 83); Preventing the intervention of a person who lacks a position with the petitioner's objection to the position of the respondent's representative (Article 85); Requesting delay of the meeting by the respondent in order to prepare the documents (Article 96); Granting the petitioner an opportunity to prepare new documents to respond to the defendant's defense (Article 97); Opportunity for the defendant of the appeal to present his answers, claims and documents (Articles 346 and 385); and communicating the secondary appeal request to the main appellant and giving a opportunity to respond (Article 413).

In general, in internal procedural laws, is better to state the necessity of observing principles, including: Equality of arms; Fair trial; Other party's right to be heard; Having an effective legal representative; Immunity of lawyer in the position of litigation and defense; Confidentiality of lawyer-client communications; Contradiction; Maximizing justice; Highest speed (reasonable duration) of proceeding; Lowest cost of proceeding; Everyone's access to courts; Public proceedings; Independence and impartiality of the court; Establishing the court according to the law; Disclosure of legal decisions and files.

Among the examples of non-observance of this principle in the domestic procedural codes are: failure to determine the appropriate legal response, including orders to suspend the proceedings or rejecting the lawsuit, the opposite conclusion by the hearing authority and the burden of the damages of the proceedings on the person behaving with bad faith, not foreseeing the reversal of the decision in the supervisory authorities, if this principle is not respected, like not accepting the search request of one of the parties in necessary cases and not communicating the briefs or answers of inquiries of official authorities or expert opinions to the other party. Failure to anticipate the appropriate legal response of the investigating or supervisory authorities, regarding: 1. Filing of fictitious lawsuits by the defendant; 2. Providing the defendant's address incorrectly or not providing it, despite knowing the correct address, by the petitioner; 3. Issuing a verdict, without holding a hearing and taking the defendant's defense; 4. Acceptance of the defendant's false objections by the hearing authority, which are expressed in order to delay the proceedings; 5. Determining trial deadlines without considering administrative holidays; and 6. Failure to respect the right to have an effective legal representative.

Keywords: Balance of Procedural Rights of the Parties, Fair Trial, Unfavorable Procedural Conditions.



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