

## **Social Performance Analysis The role of the judge in describing a lawsuit**

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**Abstract:** The litigants have the power to convince the judge of the application of the judgment applicable to those events by stating their events and issues. The expression of these issues and its legal formation is done in the form of a description of the litigation, which is one of the most important powers of the litigants. However, the judge of the court also has the authority by law to provide a correct description or re-description of the case. In this article, we studied the social function of description described by the judge by descriptive-analytical method. It can be said that the judge's authority in describing events is the result of changes in the current era, especially the provision of social benefits created by the expansion of government powers and interventions, and the judge as a representative of society and in order to achieve judicial justice. Is to have a correct description within the rules and principles of the proceedings and to respect the rights of the litigants.

**Keywords:** litigants, social interests, litigation, redesign.

### **Introduction**

According to the principle of sovereignty of litigants, it is the litigants who determine the framework of litigation and civil litigation. Article 4 of the French Code of Civil Procedure states in this regard: "The subject matter of the dispute shall be determined on the basis of the legitimate claims of the litigants." Therefore, the court does not have the power to determine the subject of the lawsuit and must issue a verdict "based on what has been claimed and only on what has been claimed" (Article 5 of the French Code of Civil Procedure). Therefore, it is not possible for the judge to make a decision outside the subject of the lawsuit and it is forbidden. In Iranian law, this issue is also approved by the legislator and the issuance of a sentence in excess of the requested amount is considered as a reason for retrial (paragraph 2 of Article 426 of the Code of Civil Procedure). Also, according to the principle of sovereignty of litigants, the judge cannot base his decision on facts that are not mentioned in the litigants' negotiations. For example, facts that the litigants did not discuss, the judge cannot consider and make a decision. However, given the social policies of governments, the need for government intervention in the establishment of peace and justice in society has increased the importance of the role of the judge and has given him authority. Powers that, within the principles and rules of fair trial, balance the civil procedure. Therefore, in this article, we seek to socially examine the role of the judge in describing the case and analyze the rules that govern it.

### **Description of the lawsuit by the judge**

One of the important duties of a judge is to describe the facts that the litigants cite to prove their right (Hormozi, 1389: 380). An incident in the outside world, or the subject matter of a dispute, will not have any identity in the proceedings until it is understood in legal terms, and

until such a description is applied, it will not be possible to sue. In fact, the functioning of the judicial system is nothing but the conformity of external events with legal rules (Cadiet, 1998: 656), according to which the court recognizes the legal rule governing the litigation and adapts it to the litigation. The plaintiff typically tries to take his case to court and interpret and indoctrinate the laws that make up his claim. Mutual debates about the meaning and scope of law enforcement sometimes take a long time, but what is presented in this context is only a petition and does not bind the court to the plaintiff's argument and is exempt from the applicable law. Moreover, in such discussions, it is not a question of proving the law, it is possible in the concept and realm of law. However, sometimes the realization of events depends on the applicable legal rule and it is that rule that gives legal meaning to the credit action (Katozian, 1392: 36). In other words, litigation should be placed in one of the legal or jurisprudential categories and the operation that is done to comply with the general rule on the subject matter is called description (Daryaei and Karbalaee, 1397: 132).

The judge must determine the subject matter of the dispute and the legal relationship between the parties, because the issuance of a sub-judgment is based on the recognition of the issue and the subject precedes the judgment. The duty of the legislator is to determine the rulings of the cases, but it is the responsibility of the judge to determine the instances of the cases (Hormozi, 1389: 382). Therefore, understanding the relevant legal relationship requires a description of the facts by the judge. The importance of the description is that the court can not issue a substantive verdict in favor of the plaintiff without presenting the subject matter to the extent and quality that justifies the application of the legal rule in question, and the appellate court, if the subject matter case. In other words, it will terminate the appealed verdict and issue a new verdict, and after the verdict is final, the Supreme Court in the appellate court, if it finds that the issues presented are not sufficient to justify the legal rule, appeal the verdict. Due to lack of legal basis (Shams et al., 1397: 124). This authority of the judge may in some cases involve him / her in substantive matters. Therefore, on the one hand, the plaintiff is obliged to specify the obligations and directions according to which he considers himself entitled to claim (paragraph 4 of Article 51 of the Code of Civil Procedure) and to state in the column related to the request the subject matter and the description of the petition. . It is also possible that the defendant, in his position of defense, raises issues or presents reasons that require the plaintiff to address new thematic issues (Iftikhar Jahromi and Dankoob, 2012: 33). Such issues raised by the plaintiff and the defendant's defense help the court to find the basis of the law for the award and may conclude that the subject matter presented was insufficient and that he or she is unable to make a decision. Because the verdict must mention the directions, reasons, documents, principles and legal materials on the basis of which the verdict was issued (paragraph 4 of Article 296 of the Code of Civil Procedure). Therefore, the plaintiff is trying to justify the application of the legal rule cited by stating the subject matter and providing positive reasons.

Therefore, the judge's first task in resolving the dispute is to describe the facts that the parties rely on to substantiate their claim. In a legal relationship, the source of the disputed right is a legal act or event. The purpose of the description is for the judge to apply what has been accomplished in the outside world to legal rules and to determine its nature. For example, if it is a legal act, determine whether it is a contract or an agreement, and if it is a contract, whether it is a definite or indefinite contract. Therefore, before applying a legal rule, the judge must first describe what has been created in the world of credit, whether it is a legal act or event, and determine what has happened, and then extract the legal ruling that governs it. (Hormozi, 1389: 35). Such duties require the judge to play an active role in all cases, as the issues, means and directions presented by the litigants may not be clear and complete. Therefore, the judge must examine whether the conditions for the application of the legal rule have been provided in the petition or their bills. Therefore, like French law, it must be said that if a judge misunderstands

the plaintiff's legal description of the events and subjects of the dispute, he is obliged to rectify it by redefining and issue an appropriate ruling, without obeying the opinion of the litigants regarding the naming. The legal nature of the dispute.

In France, the judge has the ability to examine whether the conditions for the application of the rule of law invoked by the parties have been properly established. If these conditions are met, the judge will apply the legal basis invoked by the parties, but otherwise he must re-describe the events and issues cited by the parties in order to be able to apply the appropriate and applicable legal rule. The French Supreme Court has upheld this procedure in several rulings and has redefined the employment contract described by the beneficiary as an indefinite employment contract (Mohseni, 2014: 207). This ability is based on Article 12 2 2 of the French Code of Civil Procedure, which states: "A judge shall hear a case in accordance with the rules of law to which it applies. He must give a correct description of the events and issues of the lawsuit or To replace it, without being based on the name provided by the parties for it ... ". However, if the parties have agreed on a specific description, the judge cannot change it, which is mentioned in the last paragraph of Article 12 of the said law: "... Nevertheless, he can not name it or its legal basis. When the parties, by virtue of an express agreement and in respect of the rights they are free to exercise, bind to it through the descriptions and legal points under which they intend to limit the dispute. ... ». In addition, litigants can ask the court directly for a hearing and a verdict based on certain rules. Part 4 of Article 12 of the Code of Civil Procedure of France states: "The parties may, in the same cases and under the same conditions (the conditions referred to in paragraph 3 of this Article apply to agreeing on a specific description of voluntary rights). "Give the judge a mandate to vote in a code-like manner while retaining the right to investigate, unless they have specifically waived that right." Therefore, the French case law, in order to increase the possibility of the parties interfering in the fate of their claims in the third paragraph of Article 12 of the Code of Civil Procedure, allows the parties to a dispute over rights that they are freely entitled to, by concluding an explicit agreement. Restrict to a specific description or a specific legal point, so that the elements of their negotiations and disputes in the proceedings are limited to it.

### **The basis of the right of description by the judge**

The primary traditional goal in determining the relevant criteria, especially in civil matters, is basically the termination of litigation and the chapter on hostilities, which was considered one of the important foundations of the judicial evidence system in order to maintain social order and cohesion, as well as the relative effects of this Thought still dominates our law and judicial system (Azarbayjani, 2009: 2). But with the evolution of law and the development of just ideas, the concept of judicial proof also shifted to the philosophical concept, which included the attribute of persuasion and real trial, so that the judge would first find the truth of the matter and then apply the appropriate verdict. Of course, this does not simply mean the correct application of the judgment on the subject (Lawrence, 2004: 55), which is certainly not always achievable. As a result of this change, the judge, with the aim of making sure of the issue that he initially suspected, and with the aim of real judgment and realization of the right, and finally, despite the use of all delegated powers, he has no access to Do not really find and as a last resort, the season of hostility. Therefore, a trial that in the advanced system of judicial evidence does not deal with the issue with the aim of the adversarial chapter and acts with the motive of real judgment, although to solve the problem of perception and final conclusion, resorts to the same arguments as in the original purpose (The season of hostility) takes place, but in the latter case, his authority to assess and evaluate reason will be developed and very different. The main aspect of the success created is due to the development of the judge's authority in the discovery, in the concept of the

ability and possibility of correct and complete evaluation of evidence, and therefore, except in exceptional cases, each of the evidence, in relation to each case and according to the total Circumstances and circumstances may change their presumed position and subject matter by means of it in order to realize the real proof, and if it is not possible to seize the proof of the subject and even discover the truth, the judge is obliged to be hostile in any case (Azerbaijani, 1388: 2). Therefore, the ultimate theory that is determined for the judge is to achieve justice that is necessary for this title, and in the position of proving claims, we can consider different material and spiritual elements as evidence, provided that the material element is related to the elements and To know the fixed events of the lawsuit that are proven before the judge, in such a way that their realization indicates the proof of the event that is the subject of the trial and we consider the spiritual element to be the judge's inference based on his intelligence, experience, knowledge and evaluation. A body of evidence and a material element provides evidence that this applies to the various, variable, and most influential arguments in the UAE (Mark, 1998: 87). Therefore, the exact value of the evidence cannot be determined in advance for the judge, and in each particular case, all the circumstances surrounding the case must be examined and the judge's hand in assessing the evidence and discovering the truth must be left open.

Despite the fact that the initiation of civil proceedings is one-sided and unilateral, and in other words, litigation is a mixture of unilateral actions and actions, but when a legal dispute becomes a dispute in the judiciary, a set of rights and obligations emerges. Each actor pulls the trial show to one side (the voting side). This move should not be in the form of conflict and war, but it should be in line with the rule of law and the implementation of the requirements of this rule over society. Thus, if we pay attention to the nature of the dispute as a subject of litigation, it becomes clear that the legal dispute itself is a kind of situation due to legal uncertainty in society that eliminating this uncertainty as a legal phenomenon creates a kind of duty for the persons involved. Which will be reflected in the cooperation of the parties and the judge to reach a verdict. In other words, if the parties are facing each other in a civil proceeding, but the legal relationship arising from the commencement of the proceedings, which is established by Anna's unilateral actions, leaves a neutral third party who, unlike the litigants, has no personal interest. He is in court and represents the social interests and performs the public services of justice in the society. This position of the parties and the judge in civil proceedings, in view of the interests that each represents, should in the first place, the implementation of the law And thereby in the next degree leads to the elimination of the situation created by legal uncertainty. The participation of the litigants and the judge should be done in all parts of the proceedings from the beginning to the end, from the statement and proof of the cases to their description and the application of the verdict on the case. Therefore, the duties and powers of litigants and judges in all parts of the proceedings should be well known and applied, which will require the passivity of judges and litigants in the face of justice and in the proceedings.

The idea of seeking justice emerged with the principle of the rule of will following the philosophy of natural law, which emphasizes the role of the will of individuals in providing justice in society and considered the role of the government to be limited in providing and protecting individual freedom. Gradually, however, the idea was widely criticized, and justice was not possible without government intervention. In the 19th and 20th centuries, due to the social and economic changes that governed society, and the idea of equality and freedom of individuals and the preservation of human dignity, the government led to the elimination of inequalities in the pursuit of justice. Therefore, the idea of social justice is provided by the role of individuals and the government and should seek to balance the relationship between individual rights and collective interests. Society is original for itself and has rights. Therefore, in order to ensure social benefits, justice cannot be subject to the will of individuals. Because the idea of individualism and based on the will of individuals, especially in situations where people are in

an unequal social and economic situation, will lead to the neglect of justice. People live in society and there is a conflict between their rights, society also has interests that conflict with the rights of individuals. Justice requires that there be a balance between these interests, so with the superiority of collective interests over individual interests, individual interests are limited. The best interest is with the collective interests and causes the limitation of individual interests against the collective property (Motahari, 1998: 35). Therefore, an interest that has a public aspect or its necessity is severe or social, is superior to individual interests and therefore will take precedence over it (Karimi et al., 2016: 56). Public order also requires that the rights of individuals be protected within a specific framework, and that all facilities be used to maintain public order.

### **The role of procedural principles in describing litigation**

Strategic principles of litigation are a set of general rules whose main subject is to determine the mutual role of litigants and litigation and guarantee the fundamental rights of the parties (Cornu, 1990: 272), the identification of which is necessary for the implementation of justice and the principle of equality of human beings before the law. (Jahromi and Hosseini, 1393: 26). The Constitution of the Islamic Republic of Iran introduces the elimination of undue discrimination and the creation of fair facilities for all in all material and spiritual fields as among the most important duties of the Islamic State, as well as ensuring the full rights of men and women and ensuring fair judicial security. All and equality of the public before the law is one of the duties of the Islamic Republic of Iran (Article 3 of the Constitution). Ordinary laws have also recognized the principles of fair trial, although they have not been specified (Jahromi and Hosseini, 2014: 22). According to Article 34 of the Constitution, "litigation is the inalienable right of every individual and everyone can refer to the competent courts for litigation. All members of the nation have the right to have access to such courts, and no one can be deprived of the right to a court under the law. Banned". Therefore, the government has a duty to establish competent courts for the people to refer. The task of filing a lawsuit is entrusted to the judiciary. According to Article One Hundred and Fifty-six of the Constitution, the Judiciary, as an independent body that upholds individual and social rights and is responsible for the administration of justice, The investigation and sentencing of grievances, violations, settlement of disputes and hostilities, restoration of public rights, and the expansion of justice and legitimate freedoms have taken place. The official source of grievances and complaints is the judiciary, and the formation of courts and their determination are subject to the rule of law (Article 159 of the Constitution). The legitimacy of the courts and the jury (Article 168 of the Constitution) has also been emphasized, and Article 164 has proposed the professional independence of judges. Also, the openness of the trials (Article 165), the legality of the judges' verdict and the documented and reasoned rulings (Principles 166 and 167), the equal rights of all Iranians and the non-discrimination of any unjust discrimination Iran in accordance with the law (Article 20) is another principle that has been adopted in order to guarantee a fair trial, which failure to pay attention to them in the trial, will deprive people of the right to a fair trial. Paying attention to these principles and designing the rules of procedure based on them will lead to the efficiency of legal standards and the correct implementation of the formal and substantive rules of law, as well as guaranteeing the rights of individuals and establishing judicial order and security.

These principles are the rules that govern the human will and ensure justice in the trial in such a way that, even if they are not stipulated in any text, they govern the entire trial. Strategic principles of litigation include three categories of principles: 1) principles guaranteeing fair performance in litigation, 2) principles related to the mutual role of the parties and the judge, 3)

principles related to the characteristics of the proceedings. These principles play three important roles in law: First, when there is no specific rule or law for the adversarial chapter, the judge can use these principles to find a just and just solution. Second, cases where the law is one of the instances of the general principle and finds abstract rules in social life should be interpreted broadly, but if there is an exception to the general principle, it should be limited to the specific case and the judge should not It can expand it and thirdly, the set of legal principles, the pillars of civilization and the legal system of the country are created, the recognition and support of which is a means to maintain civilization, ethics and order in societies (Katozian, 1998: 621 and 650)

Principles of the trial are not only obligatory for the parties to observe them, but also guide the legislator in setting the rules of the trial, and also the judge, as the guardian and guardian of the observance of these principles by the litigants, must be bound by these principles.

One of the most controversial issues in civil procedure is the role of the judge in proving the case. Despite the many ups and downs in the scope of the judge's involvement, which began with a passive role in the trial until the present era, it can be said that they have an active role in the trial, but the limits of this intervention are not clear and should be considered according to legal principles. And the subject matter regulations specified the scope of this authority. The judge is free within the framework of legal principles, and all the increase of his powers makes sense in the form of the basic principles of procedure, and in any case, he must be bound to observe these principles. Therefore, increasing the powers of the judge in Article 199 of the Code of Civil Procedure of 1379, according to which the court, in addition to examining the reasons cited by the parties, has the right to any investigation or action that is necessary to discover the truth. The purpose of this article, as stated in the article itself, is to discover the truth, which means that the judge must reach a convincing conscience. In other words, the Iranian legal system has distanced itself from the accusatory state and has taken on an investigative aspect. The judge has the power to take any action to discover the truth, but the question is, does he really have absolute freedom? Certainly not, because one of the consequences of the principle of impartiality of a judge is that his or her conscientious objection stems from reasons that have been raised in litigation and in accordance with the law, and he or she cannot indoctrinate his or her personal information outside the trial. To rely on and take away the opportunity of defense (Katozian, 1392: 42). It is true that in that last analysis, he must be convinced, but this knowledge must be obtained through the reasons presented to him during the trial. The personal information of the judge in the disputed event cannot be relied on, even if it was obtained through investigation of the reasons for staying outside the hearing and in the absence of both parties to the dispute (Katozian, 1392: 42) and this result is the principle of impartiality of the court. Or that based on the principle of independence and impartiality of the judge, he should consider his conscience as a clear criterion of the right and cannot leave the judgment to an expert. Regarding the expert's opinion, it states: "If the expert's opinion does not correspond to the circumstances of the researcher and the known expert, the court will not act accordingly" or in Article 241 regarding the certificate, it states: "Recognition of value and the effect of the testimony is with the court." And, in fact, the conscience of the judge must be satisfied, and this requires the judge to have the authority to assess the reasons given and to examine their veracity. The judge must determine whether the reason was given in time and accepted to prove the claim. The testimony of witnesses must satisfy his conscience, it is up to him to refer to the expert and the examination of the place, and he can ask the witness and expert what he deems necessary about the lawsuit, issue a statement to the commercial offices or the plaintiff and the denier. Read to the court for explanation. All powers must be within the framework of legal principles and rules, otherwise the guarantee will be enforced.

In French law, the principles of procedure are also considered and these principles are provided for the purpose of between the powers of the judge and the litigants and the distribution of roles between them while respecting the rights of the litigants and the principle of their freedom, as well as maintaining public order and performance. Public services of the judiciary to interact and establish the occasion. In addition, benefiting from these principles helps the way the civil proceedings are conducted and is the guide of the judge and the litigants in the court administration. That is why in the Code of Civil Procedure, the term "Directeurs" is used alongside the principles to show that these principles are governing and on the other hand, these principles are used in the interpretation of legal regulations (Cadiet, 2003: 71-110).

The court has a social role and the administration of justice is a public service, so although the judge must be impartial, this impartiality does not mean that he or she is passive. Certainly, considerable concessions have been given to the judge in conducting the trial in order to ensure its proper progress, and at the same time to address the substance of the case. Practically and procedurally, this authority is necessary to grant time periods for procedural actions and to prescribe interim measures, including the authority to consider events that the parties have not raised in support of their claims (Article 7), or the authority The judge in forcing the litigants to submit the document (Article 11), and even the powers that are at the initiative of the judge, necessary for any legal investigative action.

This improvement in the performance of the judge is innovative because the former Code of Civil Procedure of 1806 left jurisdiction to the parties and the judge was considered a passive individual. While the parties still have the power to initiate litigation, they have also gained special power to change the scope of the judge's mandate, either by limiting it to a description of the facts or to the legal points that define the boundaries of the dispute (Article 12). Paragraph 3) or vice versa, extend the powers of the judge and give him the role of mediator. (Article 12, paragraph 4). However, the judge is obliged to observe the subject matter of the case (Articles 4 and 5) and, above all, to place himself under the principle of supervision under any circumstances "(Article 16, paragraph 1.)

On the other hand, the rights and personal resources of individuals require that they use various reasons to prove their claim, and at the same time, any claim and reason must be provided to the other party so that he can defend himself. On the other hand, the necessity of the public interest in society entails the authority to judge and to determine the rules of procedure and procedures so that the judge has wide powers and can discover the truth. This conflict of public and personal legal interests of individuals requires their cooperation and participation in order to achieve the truth that is possible for them by determining and defining their rights and duties. In fact, the powers conferred on the judge by Article 199 of the Code of Civil Procedure are a legal capacity which must be exercised within the framework of the principles of procedure, and at the same time, the court must not be held captive to the wishes and desires of the litigants. Therefore, there are powers for them, and these capabilities must be in line with judicial order and justice. The parties must work together and with the court to administer justice. This cooperation requires extensive authority for them, which must be principled and regular. Creating such an environment is not a good way to apply and enforce the rules, and at the same time, it will be possible by anticipating the guarantee of proper performances. As is clearly seen in the principles of transnational civil procedure, which is a guiding document. Article 11 states: "Each party to the dispute and his or her attorneys in court and the other parties must behave in good faith. The parties shall cooperate with the court in carrying out the task of a fair, effective and reasonable settlement. The parties to the litigation should refrain from actions such as influencing witnesses and eliminating the grounds for abusing the rules of procedure. In the

preliminary stage, the parties must traditionally present in detail the alleged events and the legal aspects and solutions sought, and adequately explain the available evidence that confirms these events and the rules and solutions. When one of the parties proves with a valid reason that he is not able to provide the usual details of the events of the litigation or the sufficient details of the reasons cited, the court must consider the possibility that the necessary events and evidence will be presented later in the proceedings. If one of the parties evades the defendant's claim in a timely manner without a valid reason, which the court may accept, the court may consider this as a good basis for accepting or accepting the claim after notifying the dismissed party. . ». Therefore, anticipating the guarantee of appropriate performances in the direction of order, justice, fairness, efficiency and goodwill during the trial prevents the increase of undefined powers of the judge and disturbs the logical balance of the roles of actors during the trial (Mohseni, 1393: 150).

### **The obligation of the judge to observe the limits of the subject matter of the lawsuit**

According to the principle of domination of litigants over substantive matters, the judge cannot interfere in substantive matters because it may deviate from the principle of impartiality of the judge. In Iranian law, according to the law, it is not possible for a judge to intervene in a matter. The culprit is one of those issues that is not mentioned in the petition and has not been added to the main claim according to one of the litigation lawsuits, but has been added to the litigation during disputes between the parties or by a security method such as providing evidence or securing the claim. Mohseni, 1384: 62). This term is taken from the decision of the Supreme Court No. 3752 dated 10/24/1340, which was issued as an insistent vote, in which, despite the fact that the subject of the lawsuit was an objection to the registration by the Endowment Office, the court finally ruled Has confirmed that while issuing a ruling to revoke the registration, it has voted to oblige the protesters to remove iodine from the endowment and hand it over to the Endowment Office, arguing that the obligation to remove iodine from the endowment and hand it over to the endowment was their implicit request ( Portahmasebi Fard and Mohseni, 1384: 62). Despite accepting the possibility of a judge interfering in matters of law in French law, which Article 7 of the Code of Civil Procedure allows the judge to do, but accepting it in Iranian law in accordance with the provisions of Article 2 of the Code of Civil Procedure, which requests one of the conditions As well as paragraph 3 of Article 51 of the Code of Civil Procedure which requires the plaintiff to determine the claim and also paragraphs 1 and 2 of Article 426 of the said law that the issuance of a sentence to something that is not claimed by the plaintiff and the sentence is issued in excess of the request Considers it to be in terms of resumption of the trial, is inconsistent, and also the issuance of an extrajudicial verdict in terms of violation of the principles of the trial, such as the principle of proportionality and the right of defense, is not justified (Shams, Abdullah et al., 1397: 137).

In France, judges were previously barred from interfering in matters due to the principle of litigation and litigation, but the new Code of Civil Procedure France assigned an active role to the judge and that former practice was forgotten among judges and doctrine (Ansari, 1391: 119) and gradually, with the passage of time and social changes, with the amendment of laws, recognized the active role of the court alongside litigants. The judge's involvement in litigation increased with the passage of Article 7 of the French Code of Civil Procedure. "The judge cannot base his decision on substantive aspects that are not in dispute," he said. "The judge can consider aspects of the case in the case that the litigants did not specifically cite to substantiate their claims." In the case of events, they are generally limited to the jurisdiction of the litigants. The French Code of Civil Procedure not only states that the parties must present the facts of their claims in support of their claims. It also provides that the judge may not base his decision on events that are not in dispute, that is, not raised by the parties. However, the judge is not completely passive, and the new Code of Civil Procedure, some of its articles, gives the judge



the discretion over the events. For example, Article 8 of the law enables the judge to "invite the parties to provide explanations of events that he or she deems necessary to resolve the dispute." And the Supreme Court has always believed that this power is at the discretion of the court.

However, the extensive powers of the judge should not be considered unlimited. Rather, the judge, given the concept of "events within the litigation" can reveal the fact that the litigants did not explicitly state (Serge, 2016: 221) These issues, which originate in the defense and claims of the litigants, However, it has not been of special interest to the litigants and it may not even have occurred to the parties to find out such issues from the existing events. It can be called "sudden issues" or "side issues" (Mohseni, 1393: 174). Achieving purity and determining the thematic aspects that constitute fraudulent operations, determining the nature and scope of contractual obligations, and determining the debtor's inability to pay the debt are examples of sudden issues. Motolski referred to issues raised by the parties in the lawsuit, but did not explicitly refer to them in order to benefit from the legal effects. According to the very old case law of the French courts, side issues were said that the judge could address (Mohseni , 1393: 175).

Each dispute has a specific issue. The subject matter of each dispute is also clear. The judge may not go beyond the subject matter of the lawsuit or vote less than what is required, which is also called the "principle of the inaccessibility and immutability of the lawsuit." Nor can he change the subject of the lawsuit and, for example, rule in a case other than his will. So the judge has to rule on everything that is asked and just what is asked. In fact, in addition to the fact that the court must act within the framework of the request, in the words of the General Assembly of the Supreme Court, in the unanimous decision of procedure 670, " And his authority is also recognized in this way (Negotiations and opinions of the General Assembly of the Supreme Court in 1383, 1386: 341).

The ruling on issuing a vote on something that is not claimed by the plaintiff, or beyond the request or to a greater extent than the request, is specified in the Code of Civil Procedure, which causes the invalidity of the vote over the request (paragraphs 1 and 2 of Article 426 of the law Mentioned). But what is the duty if the vote is less than requested? In other words, if the court silences part of the request in its verdict, what is the ruling on this action and how can it be compensated? Dr. Shams is of the opinion that if the verdict is not final, there is a possibility of appeal or appeal, and if it is finalized, the part that did not appear in the verdict will not have the validity of the judgment (Shams, 1390: 384). According to Article 463 of the French Code of Civil Procedure, some have considered it as a matter of correcting the vote (Poor Ostad, 2008: 117). The refusal of the judge to comment less than the amount requested, based on the assumption that the judge, intentionally and not erroneously, ignores and neglects, is specified in Article 3 of the Code of Civil Procedure, which is accompanied by a guarantee of criminal execution. And if it is wrong, according to Article 171 of the Constitution, the government is responsible for compensation. However, if the court recognizes the case and refers to it in a justifiable manner and merely refrains from expressing its verdict, it seems that in Iranian law, unlike in France, the judge must first be allowed to investigate the matter. Aspects of the request were not objected to, and in the next degree, he defended the possibility of inferring the implicit acceptance of the uncontested request by the defendant, and considered such a request to be acknowledged. It is obvious that in any case it is necessary for the court's inference in the form of implicit acceptance of such a request to be precisely documented and justified according to the principle. In any case, due to the duty of the court to observe the required limits in this case, it seems possible to complete and correct the verdict because it was mentioned in the justifiable aspects of the verdict and the court only failed to state its verdict. . Therefore, the matter can be considered as a mistake of the court in preparing and writing the verdict and consequently the

judge himself or at the request of the interested party, will be able to issue a corrective verdict (Article 309 of the Code of Civil Procedure). Also, if a request is made in the petition and the parties have negotiated and argued about it in order to respect the rights of defense and the principle of reciprocity, in other words, it has been considered by the court, but the court of first instance, despite He has pointed out the justifiable aspects of his verdict and has not specified its verdict. The Court of Appeals can correct the verdict (Mohseni, 2014: 171).

In Iranian law, although there is no explicit ruling or regulation regarding the agreement of the parties to a specific description, the parties may nevertheless make a specific description of the matter in which they have free discretion, and the judge must Respect the dominance of the parties, and if he himself wants to replace it with a new description, firstly, it should not lead to different results from what the litigants are seeking, and secondly, it should not change the subject matter, and thirdly, if the court describes To present a new one, the principle of correspondence requires informing the parties about this matter and giving them the opportunity to defend themselves (Daryaei and Karbalaee, 1397: 148).

## **Result**

In legal cases, according to the principle of the rule of law, litigants, while stating their events and issues, express their legal description, and the scope of the judge's authority is almost limited. However, at present, due to the government's extensive interference in the provision of social justice, the judges of the courts also gained wide powers. But these powers are within the framework of the principles and rules of civil procedure and the rights of litigants cannot be ignored. Therefore, although the litigants can describe their case, the judge can also redefine it if he is not convinced in the application of the events and the legal ruling, but he must inform the litigants and respect their rights so that They can defend their rights according to the principle of proportionality.

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