Simplifying criminal lawsuit procedures

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Ahmed SOUIGAT[1], Belkacem SOUIGAT [2*]

[1] *University of Ouargla, asouig@gmail.com.*
[2] *University of Ouargla, belkacem6555@gmail.com*

Abstract

Countries have known litigation procedures since ancient times, but in a narrow way, as the Pharaohs knew it first, and it was known in the Greek and Roman eras, when litigation procedures before the reconciliation court were simple and quick, and special courts, made up of people other than ordinary judges, were established to look into certain crimes, such as crimes committed in markets and public roads, as the Middle Ages knew that criminal procedures were brief to achieve speed, however, without prioritizing the protection of individual freedom. The primary objective of streamlining criminal procedures is to tackle

Keywords

Simplifictaion of procedures;
Criminal procedures;
Litigation procedures;
Magistrtate's court;
Criminal policy;
Criminal justice.

تبسيط إجراءات الدعوى الجنائية

ملخص

عرفت الدول إجراءات التقاضي منذ القدم، ولكن بشكل ضيق، حيث عرفها الفراعنة أولاً، وعرفت في العصرين اليوناني والروماني، حيث كانت إجراءات التقاضي أمام محكمة الصلح بسيطة وسريعة، وكانت تنشأ محاكم خاصة، مكونة من أشخاص غير القضاة العاديين، للنظر في جرائم معينة، مثل الجرائم المرتكبة في الأسواق والطرق العامة، حيث عرفت العصور الوسطى أن الإجراءات الجنائية مختصرة لتحقيق السرعة، ولكن دون إعطاء الأولوية لحماية الحرية الفردية. والهدف الأساسي من تبسيط الإجراءات الجنائية هو معالجة التأخير الذي يعوق تقدمها المنتظم، حيث يعمل التبسيط أو التسهيل كأداة لتحقيق هدف محدد وهو تسريع الإجراءات، وهذا التسريع يعود بالنفع على المتهم والمجتمع والضحية، بالإضافة إلى ذلك، برز تبسيط الإجراءات الجنائية كموضوع مهم في السياسة الجنائية الحديثة. لا شك أن تبسيط الإجراءات الجنائية يهدف إلى تعزيز إدارة العدالة الجنائية وضمان شفافيتها وسلاسة ومرونة إجراءاتها، وهو أمر بالغ الأهمية ويعود بالنفع على الدولة والمتقاضين من خلال توفير الوقت والجهد وترشيد النفقات. وقد وصف الفقه هذا الهدف بمصطلحات مختلفة، مثل تسهيل الإجراءات الجنائية، وتسريع الإجراءات، وتقصير الإجراءات الجنائية، وتبسيط وتسريع الإجراءات الجنائية، وكلها تندرج تحت مصطلح التبسيط.

الكلمات المفتاحية

تبسيط الإجراءات؛
الإجراءات الجنائية؛
إجراءات التقاضي؛
محكمة الصلح؛
السياسة الجنائية؛
العدالة الجنائية.

* *Corresponding author. E-mail:* belkacem6555@gmail.com

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I- Introduction

In light of ongoing social, economic, and scientific developments, a new concept of criminal justice has begun to take shape, and this new approach combines two fundamental elements: transitioning from coercive justice to consensual justice, and expediting traditional criminal procedures.Amid the crisis in traditional criminal justice, two primary trends have emerged,the first is the policy of "reducing criminalization and punishment". This approach involves removing the criminal label from certain behaviors, making them legal, while still imposing civil or administrative penalties, or alternative sanctions, on the perpetrators. The second trend is the policy of diversion from procedures, which means subjecting defendants to a different procedural treatment than that traditionally prescribed for criminal trials, thereby facilitating the process.

The simpler the criminal procedures are, and take into account individual freedom and the rights of the accused to defend himself, the more they will achieve the work of justice, especially revealing the innocence of those who were placed in the accused by circumstances and on the other hand, justice requires simplifying the criminal procedures and not prolonging them.

In this research, we will try to shed light on the basic aspects of simplifying public lawsuit procedures, and to demonstrate their importance and the various stages they have gone through, by employing the analytical approach to study the various legal texts that address these phenomena and diagnose them.

To thoroughly address the simplification of public lawsuit procedures, we have divided the research into two main sections: the aspects of simplification in positive law (the first axis), and the aspects of simplification in Islamic law (the second axis).

II– The first axis: aspects of simplifying criminal procedures in positive law

In this section, we address the issue of expediting criminal procedures and ensuring that lawsuits are resolved within a reasonable period of time.

First: Speeding up the criminal procedures

If justice demands both speed and simplicity in procedures, it is crucial that these efficiencies do not compromise human rights. Human rights should not hinder the effectiveness of penal procedures, as both are equally important. Therefore, the interest lies in maintaining a balance between ensuring procedural efficiency and upholding human rights.

The public prosecution process comprises two main stages: the preliminary judicial investigation stage and the sentencing stage. However, the preliminary investigation stage is preceded by an initial phase focused on gathering information about the crime, and this preliminary phase is essential as it forms the basis for the Public Prosecution's decision on whether to pursue a public lawsuit, although the investigation stage is crucial for thorough preparation for the trial, it can be either modified or narrowed in scope. Despite its importance in ensuring the criminal case is properly prepared for trial, adjustments can be made to streamline the process.[1].

In Egyptian legislation, as outlined in Article 63 of the Code of Criminal Procedure, if the Public Prosecution determines that a lawsuit is valid to file based on the evidence collected in cases involving violations and misdemeanors, it may proceed with the legal action, and it summons the accused to appear directly before the court, hence, it is clear that it is not a legal requirement to refer misdemeanor and violation cases to the competent courts that the prosecution has conducted an investigation into them, so it is permissible to refer them based on police investigations if the prosecution deems them sufficient, and the public lawsuit can be filed if it is filed by directing the accused to appear before the competent court[2], because the legislator believes that crimes of low importance, such as violations and misdemeanors, do not need a preliminary investigation due to their lack of seriousness, in line with simplification and speed, as in summary judicial cases, there is no need for a preliminary investigation with the accused, and no action is taken with him except after he appears before the court, and this is an essential guarantee for the accused, because his case is handled by the judiciary from the first step with full trial guarantees, and thus the advantage of speedy completion is achieved while providing guarantees for the accused[3].

In Algerian legislation, Article 66 of the Code of Criminal Procedure stipulates that the principle of investigation is mandatory for felony crimes, optional for misdemeanors unless specific provisions dictate otherwise, and permissible for violations. This approach aligns with the principles found in many legal systems influenced by French legislation[4].

Therefore, it is evident that the Public Prosecution cannot request an investigation into violations and misdemeanors that are not explicitly mandated by law to be investigated. Instead, the case documents can be directly referred to the ruling authority for a decision, additionally, an investigating judge is not permitted to conduct an investigation unless there is a request from the Public Prosecutor, even in cases involving flagrant felonies or misdemeanors,because the authority of the investigating judge is restricted in terms of origin and subject matter, as he cannot exercise it except under a special assignment from the Public Prosecutor, and based on a written request within the context of the notified facts, and therefore there is no authority without assignment, and there is no accusation without follow-up[5].

One of the manifestations of simplification and speed is that contemporary legislation has approved the filing of a lawsuit through a summons to appear, according to which the Public Prosecutor sends a notice to the accused inviting him to appear before the court on the date specified for his trial, with the necessity of indicating in the summons to appear the type of crime being prosecuted, as well as the legal texts that govern and punish it.

The legislation has given the victim the right to directly file a lawsuit before the court. However, the application of this right varies across Arab legislation due to the nature and type of disputes and the classification of crimes. As a result, the provisions for direct assignment are not uniform, despite being based on French legislation.[6].

The Algerian legislator mandates that the direct summons issued by the civil prosecutor be limited to five specific crimes, as outlined exclusively in Article 337 bis, these crimes are the misdemeanor of abandoning the family, the misdemeanor of not surrendering a child, the misdemeanor of violating the sanctity of a home, the misdemeanor of defamation, and the misdemeanor of issuing a check without funds. Outside of these cases, permission must be obtained from the Public Prosecution to carry out a direct summons to appear, and it is certain that the legislator intends the rest of the misdemeanors or violations, with the exception of felonies, as they must be investigated[7].

One manifestation of speeding and simplification is the immediate appearance system, designed to streamline criminal procedures and enhance the effectiveness of criminal justice by relying on the consent of both parties involved in the public lawsuit. The French legislator introduced this system under Article 137 of Law No. 204/2004, dated March 9, 2004. This system applies to adults but not minors, and it is limited to misdemeanors punishable by a fine as the primary penalty or by imprisonment for a period not exceeding five years.[8].

The United States is regarded as the birthplace of this system. It has gained support from both legal scholars and the judiciary. In the USA, the Public Prosecution operates under the principle that "what cannot be fully comprehended should not be largely ignored", this means that if there is substantial evidence indicating the accused's guilt, they should not be allowed to escape punishment or be acquitted, even if the evidence is not overwhelmingly strong. This principle ensures that the accused does not go unpunished when there is significant evidence of their involvement in the crime.[9].

Perhaps the most notable feature of this system in the USA is its applicability to nearly all types of crimes, irrespective of their severity, and exceptions are in states that have specific provisions for crimes punishable by death or life imprisonment, and California also excludes resorting to this system if the accused is accused of using a firearm, or driving under the influence of alcohol or narcotic substances, and similar to the American model, English law and Canadian law enshrine this system and permit its application to all types of crimes, regardless of their seriousness[10].

The Algerian legislator following the French legislator, introduced the system of immediate appearance before the court through Order No. 15/02, issued on July 23, 2015. This amendment to the Code of Criminal Procedure is detailed in Articles 339 bis to 339 bis 7, and it is in crimes that carry the description of a misdemeanor, provided that the case does not require an judicial investigation, or subject to special procedures, and the immediate appearance procedures have replaced the previous procedures that were governed by Articles 59 and 338 of the Criminal Procedure Code , which were abolished.

The immediate appearance system is a method of saving time, streamlining procedures, and expediting the administration of justice through an informal agreement between the Public Prosecution and the accused. This approach yields much faster results than traditional procedures for public lawsuits and is seen as an effective means of addressing case backlogs and the slow pace of criminal justice.[11].

On the other hand, the criminal order is a key procedure designed to shorten legal processes. It serves as a significant alternative by helping to reduce the volume of cases in the courts, additionally; it benefits the accused by minimizing the risks associated with a trial and allowing for a quicker resolution, which is advantageous for all parties involved in the dispute.[12].

The criminal order system[13] is a special procedural system that aims to confront a specific type of crime with the aim of ending its procedures and putting an end to the expiry of the lawsuits arising from it, in a simple and easy way, in which the rules prescribed for hearing in ordinary trials are not taken into account.

One of the most prominent features of the penal order is its focus on simplifying procedures and saving time, effort and expenses, which serves the public and private interest, as the judge issues the penal order after reviewing the case papers without the need for an official session, which would save time and bypass stages that the legislator considered unimportant for issuing the penal order. In return, and due to the efficiency of this system, it has been adopted by many legislations, including Algeria, Morocco, Egypt, and other countries, as corrective and remedial measures to enhance the effectiveness of the judicial system. The Algerian legislator established the provisions of the penal order in Articles 380 bis to 380 bis 7 of Order No. 15-02, issued on July 23, 2015, which amended the Code of Criminal Procedure

Second: settle lawsuits quickly.

A speedy trial, or a trial within a reasonable period as defined by the European Court of Human Rights, involves examining the case promptly without causing undue hardship or harm to the accused, however, speed does not equate to haste, as jurisprudence suggests. A hasty trial can undermine the guarantee of the defendant's rights. International

conventions interpret a speedy trial as one conducted within a reasonable period, balancing efficiency with the protection of defense rights.

It is important to differentiate between the right to a trial within a reasonable period and the right to defense. The latter requires that the trial allow sufficient time for discussing evidence and enabling the accused to present their defense effectively, this includes the obligation of the court to hear the accused, consider the witnesses they present, and thoroughly examine the aspects of their defense, and it may It appears that respecting these procedures conflicts with the right to a speedy trial, but the truth is that there is no obstacle to achieving speedy trial procedures while respecting the basic principles of the right to defence[14].

It is worth noting that determining the reasonable period within which the case must be resolved varies from one case to another, depending on the seriousness of the crime, its elements, and the number of accused and victims, which has prevented the issuance of a text in most criminal procedure laws requiring the court to resolve trials within a specific period of time, and due to the importance of this principle, international conventions relating to the protection of basic human rights and freedoms have given it attention[15], and the right of the accused to a speedy trial has become a constitutional right stipulated in the constitutions of civilized nations.

The Algerian legislator, similar to much Arab legislation, has not explicitly addressed the right to a trial within a reasonable period in the constitution or relevant legal texts. Despite Algeria's accession to the International Covenant on Civil and Political Rights, which encompasses this right, the Code of Criminal Procedure, while incorporating aspects of this right in various articles, falls short of meeting the standards and expectations found in Western countries.[16].

The Algerian Code of Criminal Procedure has established legal deadlines and deadlines that constitute a procedural restriction on judges, putting them in a race against these deadlines to complete the procedures before their deadlines expire. Also, by reviewing some of the texts of this law, we find that the legislator used some terms in drafting these texts, including the phrase: within a maximum time, immediately, immediately and by the fastest means, and other phrases that indicate the obligation of speed in these procedures[17].

The summary trial system, originating in Anglo-Saxon law, has been adopted by countries like India, Sudan, Iraq, and Qatar. This system maintains essential criminal procedural rules and ensures the rights of litigants are upheld. Its primary aim is to expedite proceedings, either by simplifying them or by significantly shortening certain cases. It is typically applied to less serious crimes, such as minor violations and misdemeanors, which do not require extensive investigations. In such cases, the trial and sentencing are often concluded in a single session, thereby achieving swift adjudication and reducing costs.

In England, the summary trial system allows the judge to adjudicate the case in a single session; however, if the defense challenges the charges, the trial may extend to three sessions. In the first session, the defense presents its arguments, which might lead to a postponement for another session to hear witnesses, followed by a sentencing session, and if the accused is convicted, the court may require additional time to determine the sentence.[18].

There is a modern version of it in Italian law, where the accused requests that the trial end in the preliminary session after the approval of the Public Prosecution, and the judge issues a penalty order if he deems that the case is fit to be decided based on the evidence available to him, and although this trial is carried out at the request of the accused against whom evidence is available, and thus the possibility of his conviction is high, the accused can be acquitted through this system, and the Public Prosecution has the right to refuse a summary court in some cases[19].

Article 11(b) of the Canadian Charter of Rights and Freedoms guarantees the right of the accused to be tried within a reasonable period. As a result, several principles have been established by the Supreme Court of Canada, the most significant of which are:

-The right to a speedy trial serves to safeguard the accused's physical freedom from prolonged detention before a public lawsuit without legal justification.

- The right to a speedy trial also aims to protect the accused’s security, encompassing the protection of their private, family, social, and professional life.

From this, we can conclude that the right to a trial within a reasonable period is both a personal right and a social imperative. It ensures the necessary protection of freedom, security, and fairness for the accused, while also enabling society to achieve justice, deterrence, and the reintegration of convicts.[20].

Determining the reasonable period for a fair trial requires an in-depth assessment of the duration of these proceedings and when this period begins, which affects the assessment of the authorities’ commitment to the principle of a reasonable time frame, which can be extended or reduced based on several considerations. In this regard, three main approaches have emerged to address this issue:

• The proponents of the first approach believe that the calculation of the period begins from the moment the accused’s status is officially established.

• The second approach believes that the period should be calculated from the moment the official indictment is brought.

• The third approach believes that the period begins when the accused asserts his right to a trial within a reasonable time, and continues until a final judgment is issued.

In general, it is difficult to define the concept of the reasonable duration of criminal proceedings, as each case has its own circumstances and details, and it can be said that the European Court of Human Rights was largely successful in using the appropriate term and choosing three criteria for estimating the reasonable duration, which are the degree of complexity of the case, the behavior of the accused, and the position of the judicial authorities[21].

The practical application of the right of the accused to a trial within a reasonable period revealed the existence of many difficulties that prevented it from being applied appropriately, even in countries whose constitutions stipulated it without the relevant laws, as it became clear that the matter requires more precise legislative texts that specify specific periods for the completion of the investigation and trial, and the appropriate and strict penalty, and this transfers the right to trial within a reasonable period from the rank of goals to the rank of legal rights in the true sense of the word[22].

III- The second axis: simplifying procedures in Islamic law

It is worth noting that in Islamic legislation there is a noticeable focus on reducing and simplifying unnecessary procedures to facilitate the litigation process. For example, the "Hisbah System" and "Police Companion" aim to reduce the burden on the judiciary and expedite the resolution of cases that do not require extensive investigation or proof, because some cases are resolved within a narrow and simple scope that benefits everyone.

In addition to the judiciary, the islamic system uses other agencies to address minor violations and impose penalties on perpetrators. These agencies help reduce the burden on the judiciary by dealing with crimes that the organization considers non-serious and do not require horizontal or vertical expansion in directly punishing the perpetrator and deterring him from repeating his crime, allowing the judiciary to focus on more important and more serious cases, and among these agencies that seek to achieve the aforementioned goals are the Hisbah System and the police.

First: The Hisbah system

Hisbah involves promoting what is right when it is evident that it has been neglected and prohibiting what is wrong when it is apparent that it has occurred. As Al-Ghazali described it, Hisbah is "preventing evil in accordance with the rights of Allah, to protect what is forbidden from approaching evil".

Hisbah is a religious duty involving the promotion of good and the prohibition of evil. The official responsible for this function was known as the Muhtasib, who was often one of the judges due to the close connection between the roles of the Muhtasib and the judge.

The legal basis for the Hisbah system is the Holy Qur'an and the Sunnah of the Prophet. In the Holy Qur'an, we find several verses indicating its obligation, including the words of AllāhAlmighty:

﴿And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful[23]﴾, and Allāh says in the verse: ﴿The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakāh and obey Allāh and His Messenger. Those - Allāh will have mercy upon them. Indeed, Allāh is Exalted in Might and Wise[24]﴾.

In the Sunnah of the Prophet, there are many hadiths that indicate the necessity of Hisbah, and perhaps the most famous and powerful of them is what was narrated by the great companion Abu Saeed Al-Khudri, may Allāhbe pleased with him, that the Prophet, may Allāh's prayers and peace be upon him, said: ((Whoever among you sees an evil, let him change it with his hand, and if he is not able, then with his tongue, and if he is not able, then with his heart, and that is the weakest of faith))[25].

From the above, it is evident that Hisbah is a general obligation for every Muslim. It becomes an individual obligation for those who are capable if no one else undertakes it. Capability in this context refers to having the necessary authority and leadership to fulfill the role. A Muhtasib is a trustworthy and morally upright individual appointed by the Caliph to oversee and supervise commercial markets and public roads, and their responsibilities include monitoring prices and weights, as well as ensuring adherence to moral standards and public order.

The Muhtasib appoints assistants, addresses minor crimes committed within their jurisdiction, typically flagrant offenses, and imposes immediate punishments on the perpetrators. The authority of the Muhtasib is both administrative and judicial.

For the Muhtasib to intervene, certain conditions must be met, which include:

A. The act must be prohibited by law.

B. The act must exist and exist as soon as the Muhtasib intervenes.

C. The act must be apparent without espionage.

D. Denying the act must be clear and does not require diligence.

E. Repelling evil with the easiest way to repel it.

The ruling on “Hisbah” is determined by three conditions:

A. The case relates to one of the rights in which the Muhtasib may intervene.

B. These rights should not be subject to denial.

C. The accused must be financially well-off and capable of performing.

The Muhtasib's jurisdiction is limited to adjudicating cases of minor importance and does not extend to more serious offenses, and if the Muhtasib encounters a charge that exceeds their judicial authority, they are required to refer the matter to the judiciary and assume the responsibility of initiating a criminal case.

In addition to the aforementioned financial penalties, which are considered a deterrent to the violator of the law, the Muhtasib may impose other types of penalties on violators, which are as follows:

A. Reprimand or taunting, with the aim of deterring the violator and dissuading him from repeating the violation as a type of psychological punishment.

B. Suspending the violating merchant from practicing the work for a specific period, which would deter the violator due to the potential financial loss associated with this, due to stopping the activity.

C. Beating or flogging, which are physical punishments that result in physical pain and harm, and weakening of health, as merely remembering them prevents the violator from returning to committing the sin.

D. Destroying tools prohibited by Sharia, such as confiscating and destroying musical instruments, clothing, and tools used in licentious evenings, or brothels, with the possibility of imposing other accompanying penalties, which would prevent him from repeating the forbidden activity.

From the above, the importance of adopting the Hisbah system in Islamic society becomes clear to us, including preventing the spread of vice among individuals and groups, purifying society from the causes of decline and collapse, and encouraging good behavior familiar with sound customs and morals that ensure its cohesion, which leads to reducing the burden of litigation, and facilitates the elimination of corruption and evil at its onset, because eliminating it at first is easier than leaving it to spread, which makes it difficult to confront and requires harnessing different means and methods to achieve this. In this regard, the Hisbah system spread in Islamic countries and continued to be used until the early twentieth century, when the Hisbah system stopped performing its function as a religious institution, and was replaced by the administrative police apparatus.

Second: The role of the police in simplifying procedures

The police are one of the institutions responsible for addressing crimes of minor importance. A police officer, in addition to their primary duties, was also a prominent figure who implemented criminal rulings issued by the judge in matters related to Islamic law.[26].

While the chief of police at the beginning of the Umayyad era was specialized in looking into crimes of minor importance and punishing their perpetrators in a summary manner, in the Abbasid era the powers of the chief of police increased, as the major police were assigned to look into serious criminal cases, and the minor police were assigned to look into lesser cases, with its authority to impose punishment in all cases, however, with this broad authority, it cannot issue orders for simple imprisonment without trial.

In summary, the principles of the Islamic religion do not stipulate a specific procedural system, but rather formulate general rules for litigation and adjudication between disputants, to ensure the highest degree of justice and integrity in resolving disputes. We must also note that the viewpoint of Islamic law, with its various orientations and texts, does not recognize the existence of any conflict in simplifying procedures as long as they are consistent with these comprehensive principles of the tolerant Charia, and achieve its goals of spreading peace, security and safety among the various classes and individuals of society.

Conclusion:

After we studied and analyzed in the current research the various texts related to simplifying the procedures of public lawsuits, whether related to civil law or to the texts of Islamic law, it became clear to us the extent of the importance of these aspects for the litigants, in all cases, as they save them effort and money and preserve their dignity, as Islamic law has encompassed all aspects related to the subject, and it became clear to us the great role played by the Hisbah and police agencies in simplifying these procedures and applying them in a way that benefits everyone, to avoid prolonging the procedures of public lawsuits, and causing material and moral harm to the parties to the dispute.

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