



جمهورية العراق
وزارة التعليم العالي والبحث العلمي
جامعة الموصل
كلية الحقوق

إنقضاء الدعوى المدنية بغير حكم (دراسة مقارنة)

رسالة ماجستير

تقدم بها الطالب

(فؤاد رعد حسين عبد الله العبادي)

إلى مجلس كلية الحقوق / جامعة الموصل

وهي جزء من متطلبات نيل شهادة الماجستير في القانون الخاص

بإشراف الدكتور

(صدام خزعل يحيى)

أستاذ قانون المرافعات والاثبات المساعد

المستخلص

تعد الدعوى المدنية التطبيق العملي لحق من أهم الحقوق التي كفلتها الدساتير في أغلب بلدان العالم وهو حق التقاضي، كما إنها تعتبر الوسيلة التي أقرتها التشريعات الاجرائية لممارسة ذلك الحق، بهدف استحصال الحقوق الموضوعية المتنازع عليها أو للحصول على الحماية القضائية لتلك الحقوق عن طريق وقف الاعتداء عليها أو منعه؛ وذلك كله يتجسد في صدور حكم قضائي حاسم لموضوع الدعوى، إذ تنتهي معه الخصومة وبه يوضع حداً فاصلاً للنزاع القائم بين الخصوم وهو يمثل النهاية الطبيعية للدعوى والغاية الرئيسية من إقامتها.

إلا أن الدعوى لا تكون نهايتها دائماً نهاية طبيعية، إذ تقتضي في كثير من الاحيان بغير حكم فيها فاصلاً للموضوع منهياً للنزاع، ويراد بإنقضاء الدعوى المدنية بغير حكم زوالها قبل ان يصدر فيها حكم قضائي نهائي حاسماً للنزاع القائم بين أطرافها؛ وذلك عند توفر إحدى الحالات أو الأسباب التي يؤدي تحققها إلى إنقضاء الدعوى بصورة غير اعتيادية.

ان إنقضاء الدعوى المدنية بغير حكم يعد استثناءً من الأصل العام ويكون هذا الإنقضاء على نوعين، النوع الأول اجرائي لا يتعلق بالحق الموضوعي، وانما يمس الناحية الاجرائية في الدعوى المدنية، وهو يكون إما بقبول الدفوع الشكالية كقبول الدفع بعدم الاختصاص المكاني أو النوعي للمحكمة، أو قبول الدفع بعدم القبول مثلاً بقبول الدفع بسبق الفصل في الدعوى، أو عند اعتراء سير الدعوى طارئاً أو عارض يخرجها عن سيرها المنتظم والمعتاد كحالة اتفاق الخصوم على وقفها أو انقطاعها لوفاة احد الاطراف، أو بإبطال عريضتها (تركها) من قبل المدعي أو لسقوطها نتيجة إهماله في متابعة سير واجراءات دعواه فترة من الزمن أو انقضاؤها بمضي المدة دون متابعتها من قبل طرفيها مدة زمنية محددة، ويترتب على قبول الدفوع وتحقق إحدى الاحوال الطارئة (العارضة) في الدعوى إنقضاؤها اجرائياً دون المساس بأصل الحق وبالتالي لا تحول دون تجديد النزاع بذات الموضوع مستقبلاً فالإنقضاء الاجرائي يشمل الاجراءات دون الموضوع.

أما النوع الثاني الإنقضاء الموضوعي والذي يمس أصل الحق المدعى به فيكون عند تنازل المدعي عن الحق الموضوعي في دعواه، أو نتيجة اتفاق الخصوم على الصلح وإنهاء النزاع القائم بينهم والمعروض على القضاء بشكل ودي، أو عند مرور الزمان المانع من سماع الدعوى، ويترتب على تحقق التنازل أو حدوث الصلح أو مرور الزمان إنقضاء الدعوى موضوعياً مما يعني عدم امكانية عرض النزاع المتنازل عنه سابقاً أو الذي تم فيه الصلح أو لمرور الزمان عليه على القضاء مجدداً فالإنقضاء الموضوعي شاملاً للإجراءات والموضوع معاً.

ومما يؤخذ على إنقضاء الدعوى المدنية بغير حكم، إنها تنقل كاهل المحاكم والخصوم أو أحدهما وخاصة الإنقضاء الاجرائي الذي لا يحول دون تجديد النزاع وبالتالي إعادة نظر الدعوى بإجراءات جديدة، مما يؤدي إلى هدر الإجراءات المتخذة من قبل المحاكم والخصوم أنفسهم، وكذلك ضياعاً للجهد والوقت المبذول بشأن النزاع من أجل حسمه، وما يترتب عليه من زيادة النفقات على المتخاصمين.

ABSTRACT

The civil lawsuit is the practical application of one of the most important rights guaranteed by the constitutions in most countries of the world, which is the right to litigation. It is also considered the means approved by procedural legislation to exercise that right, with the aim of obtaining disputed substantive rights or to obtain judicial protection for those rights by stopping the assault on them. or prevent it; All of this is embodied in the issuance of a decisive judicial ruling on the merits of the case, as the dispute ends with it and a decisive end is put to the existing dispute between the opponents. It represents the natural end of the case and the main purpose of its establishment.

However, the end of the lawsuit does not always have a natural ending, as it often expires without a ruling that settles the matter and ends the dispute. By expiring the civil lawsuit without a ruling, what is meant is that it disappears before a final judicial ruling is issued that is decisive for the dispute existing between its parties. This occurs when one of the conditions or reasons exists, the verification of which would lead to an unusual cessation of the case.

The expiration of a civil lawsuit without a ruling is considered an exception to the general rule, and this expiration is of two types. The first type is procedural and does not relate to the substantive right, but rather affects the procedural aspect of the civil lawsuit. It is either by accepting formal defenses, such as accepting the defense of the lack of spatial or qualitative jurisdiction of the court, or accepting Defense of inadmissibility, for example by accepting the defense that the case has already been decided, or when an emergency or incidental disturbance in the progress of the case takes it out of its regular and usual progress, such as when the opponents agree to stop it or Its interruption due to the death of one of the parties, or the invalidation of its petition (abandonment) by the plaintiff, or its lapse as a result of his negligence in following up on the progress and procedures of his claim for a period of time, or its expiration with the passage of time without being followed up by both parties for a specific period of time, and it results from the acceptance of the defenses and the fulfillment of one of the emergency (incidental) circumstances. In the case, it is procedurally terminated without prejudice to the origin of the right, and therefore it does not prevent renewing the dispute on the same subject in the future. Procedural expiration includes Procedures without subject.

As for the second type, substantive extinction, which affects the origin of the claimed right, it occurs when the plaintiff waives the substantive right in his claim,

or as a result of the opponents agreeing to reconcile and ending the dispute that exists between them and which is presented to the judiciary in an amicable manner, or when time passes that prevents the case from being heard, and the fulfillment of the waiver results. Or the occurrence of reconciliation, or the passage of time, the expiry of the lawsuit objectively, which means that it is not possible to present the dispute that was previously waived, or in which reconciliation was concluded, or due to the passage of time, to the judiciary again, so the expiration Objective, including both procedures and subject matter.

One of the criticisms that a civil lawsuit may end without a ruling is that it burdens the courts and the litigants, or one of them, especially the procedural expiration that does not prevent renewing the dispute and thus reconsidering the case with new procedures, which leads to a waste of the procedures taken by the courts and the litigants themselves, as well as a loss of effort and time spent on the matter. The dispute in order to resolve it, and the resulting increase in expenses for the disputing parties.

The Iraqi legislator, in the Civil Procedure Code, did not regulate the defense of inadmissibility, which is one of the defenses whose verification results in the issuance of a ruling that is not decisive on the subject, in a tightly regulated manner similar to the formal defenses, despite the seriousness of the consequences of accepting it, as it leads to the expiration of the civil lawsuit without a ruling. Nor did it It deals with the organization of all cases of the expiration of a civil lawsuit. It did not stipulate the case of its expiration as a result of the plaintiff's negligence in following up on his lawsuit, but rather was satisfied with what he mentioned within the provisions of cessation and discontinuation. When they continue in their conditions for a period of time, they are required to invalidate their petition.

However, the lawsuit is safe from invalidation and consequently extinction if its suspension or interruption continues for more than the legally prescribed period for a reason that has nothing to do with the plaintiff or the presence of a legitimate excuse. Likewise, it is not stipulated that it should expire. The period is a result of the failure of the two parties to the dispute to continue its progress and follow up on its procedures for a legally specified period of time, and the important effects it has on the case, and it was not regulated The circumstances of its objective expiration, as he was satisfied with what was stated in the substantive law (civil law) regarding it, even though the latter did not clarify the implications of its objective expiration despite its seriousness to the claimed subject

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**The civil case ends without a ruling
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