Comparative Study of In Absentia Proceedings in Jurisprudence, Existing Laws, and Former Laws

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Abstract

According to the Code of Criminal Procedure, judicial authorities are obliged to address cases as swiftly and expeditiously as possible and to refrain from any actions that may cause delays in the course of proceedings. Today, there exists a general rule and principle in litigation that is recognized by international instruments and considered conventional and reasonable: the judicial process must be completed within a reasonable and appropriate period of time, producing effective outcomes and safeguarding the rights of all parties involved. It is also widely accepted that delay in the administration of justice constitutes a form of injustice. On the other hand, contemporary legal discourse highlights the notion of economic litigation, where the goal is to conduct adjudication at the lowest possible cost. Among the significant costs in legal proceedings are the financial burden of litigation and the time required for the adjudicative process. In many cases, time is regarded as one of the most essential and critical factors to be evaluated. In other words, the benefit, influence, and efficiency of litigation are closely linked to the speed of the proceedings. One of the issues that significantly contributes to the prolongation of criminal proceedings is the matter of in absentia adjudication. This article examines the existing legal frameworks in this field and the factors influencing the delay of the judicial process in absentia cases. The core question addressed in this study is whether the current laws governing in absentia criminal proceedings—when compared with Islamic jurisprudence, existing laws, and previous legal frameworks—play a role in prolonging criminal trials, thereby causing procedural delays, hindering timely justice, and preventing the parties from promptly attaining their legal rights.

Keywords: trial time, in absentia proceedings, in absentia judgments, right of objection, prolongation of proceedings

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1. Introduction

One of the fundamental rules of litigation—particularly in the context of fair trial—is that the proceedings must be conducted in the presence of both parties (Shāhcherāgh, 2010). Among the strategic principles governing litigation are the right to defense and the principle of adversarial proceedings (Shāhcherāgh, 2010). The right to be tried in person is considered one of

the minimum guarantees of a fair trial (Mohammadi Kang Sofla, 2015). Another core principle of litigation is the requirement of expeditious proceedings; litigation must be completed within the shortest possible time. Some scholars argue that timely adjudication within the shortest legally permissible period is a key indicator of fair and equitable trial (Khaleghi, 2014).

Under the law, during litigation, both parties and the court have certain rights and obligations, and specific legal requirements must be observed. The complainant is obliged, after filing a complaint, to provide the judicial authority with evidence and supporting documents for the claim. If the judicial authority considers the evidence sufficient and the accusation against the defendant well-founded, it must summon the defendant and notify them of the complaint. The defendant, in turn, has the right and obligation to appear before the court and either accept or deny the alleged charges in defense. Society also has the right to expect that, upon the occurrence of a crime, criminal measures against the offender will be promptly taken (Khaleghi, 2016).

The judicial authority is obliged to decide within a reasonable and appropriate time on whether the claim of the complainant or the prosecutor is established and whether the accusation is sufficiently supported. Litigation must occur within a reasonable period, and any delay must also remain reasonable. Unreasonable delays in adjudication deprive individuals of the benefits and outcomes of the judicial process. As an English legal maxim states, “justice delayed is justice denied” (Qorbani, 2011). The failure of any party to appear within the legally prescribed reasonable period should not serve as a justification for the judicial authority to refrain from making a proper legal decision.

If the complainant fails to appear or to provide sufficient evidence, the judicial authority must issue a ruling to reject the complaint or discontinue the prosecution and formally notify the party involved. However, when the complainant and the prosecutor have provided complete evidence and the court has duly informed the defendant and granted sufficient opportunity for defense but the defendant still fails to appear, the question arises: should the court nonetheless suspend proceedings pending the defendant’s presence? Such suspension would violate the complainant’s right to timely justice and society’s right to the punishment and deterrence of offenders. Today, issuing a substantively correct judgment after unreasonable delay is itself considered a form of injustice and denial of rights (Dehghani, 2004).

Taking into account the rights of both parties and the legal requirements for accelerating adjudication and protecting the complainant’s rights, the legislator has allowed and regulated trials in absentia—litigation without the physical presence of the accused—while ensuring procedural safeguards except in exceptional circumstances (Ashouri, 2009). This study examines the governing rules in this field, the historical development of legislation, the current applicable laws, and their deficiencies, with a particular focus on how these rules affect the speed or delay of criminal proceedings.

2. Definition, Philosophy, and Effects of Objection (Wākhwāhī)

Wākhwāhī refers to the request for reconsideration and re-examination of a case in which a defendant has been convicted by a court without being present at the hearing. The term *wākhwāh* denotes the objecting party, and *wākhwāhī* refers to the act of raising such an objection (Ja'fari Langaroudi, 2006). It is one of the ordinary remedies available against judicial decisions. According to the law, two types of appeals exist: ordinary and extraordinary. Wākhwāhī is among the ordinary means of challenging judgments, designed to provide every convicted person the natural right to contest criminal judgments as determined by the legislator (Goldoost Jouybari, 2010).

The rationale behind recognizing *wākhwāhī* is grounded in the accused’s right to be present at trial. Litigation must be conducted with both parties in attendance so that each party in a criminal case may present evidence, respond to allegations, and defend themselves. The right to be tried in person constitutes one of the minimum safeguards of a fair trial (Mohammadi Kang Sofla, 2015). Another reason for *wākhwāhī* is the necessity of hearing the defendant’s defense at least once to ensure fairness (Khaleghi, 2016). The right of *wākhwāhī* fundamentally stems from the defendant’s right to defense, which is one of the central principles of litigation (Shāhcherāgh, 2010). Additionally, the right to be informed of the charges is regarded as a critical guarantee of the presumption of innocence (Qorbani, 2011).

Another rationale for permitting trials in absentia is the need to resolve disputes efficiently in society and to maintain the uninterrupted function of the Islamic judiciary (Mohajeri-Pourarab, 2002). One of the primary effects of filing a *wākhwāhī* is the suspension of the execution of the judgment; once the objection is lodged, enforcement of the sentence is paused until

the objection is resolved and the case is returned to the court that issued the default judgment. Some scholars maintain that the personal presence of the convicted individual is required to suspend the execution of the judgment, and an objection filed solely by an attorney may not suffice to halt enforcement (Khaleghi, 2014).

Another important effect of *wākhwāhī* is its *transferring effect*; it moves the case from the previous stage (in absentia trial) to the *wākhwāhī* stage, transferring all existing legal issues and rights into the new review process while taking into account the defendant's objection and supporting evidence.

3. Cases Permitting In Absentia Proceedings

Although trials in absentia have been recognized by the legislator, the law—guided by public interest considerations and inspired by jurisprudential foundations—has excluded certain circumstances where adjudication in the absence of the accused is not permissible. In matters that are purely divine rights (*ḥaqq Allāh*), trials in absentia are not allowed. One of the distinctive features of the Islamic judicial system, explicitly mentioned in jurisprudence, is the classification of crimes regarding prosecution and punishment into two categories: *ḥaqq Allāh* (rights of God) and *ḥaqq al-nās* (rights of individuals). Yet, statutory law does not provide clear and consistent criteria for distinguishing which offenses constitute divine rights. According to Article 8 of the 2013 Code of Criminal Procedure, the legislator implicitly presumes a divine aspect for every offense. Some scholars argue that *ḥaqq al-nās* refers to rights recognized for specific persons or communities, whereas *ḥaqq Allāh* pertains to the rights of God and the public order (Ja'fari Langaroudi, 2006).

In judicial practice and advisory opinions, certain criteria have been developed to distinguish *ḥaqq Allāh* from *ḥaqq al-nās*. According to Legal Advisory Opinion No. 14/92/1540 (October 29, 2013) of the Legal Department of the Judiciary, crimes arising from violations of divine ordinances are categorized as *ḥaqq Allāh*, while crimes originating in violations of private rights or harm to individuals fall under *ḥaqq al-nās*. Similarly, Legal Advisory Opinion No. 6899/7 (February 4, 1986) states that *ḥaqq al-nās* offenses are those that cause harm to a particular person or specific individuals. In the view of the Supreme Judicial Council (February 5, 1984), crimes that exclusively involve private harm to identifiable persons fall within *ḥaqq al-nās*, while offenses undermining public order, morality, and communal security belong to *ḥaqq Allāh* (Hojjati-Bari, 2005). Some legal scholars argue that no single universal criterion can perfectly divide these two categories and that issuing unifying judicial precedent (*ra'y-e vaḥdat-e ro'yé*) is the most effective solution (Ashouri, 2009).

3.1. Circumstances of Default Judgments

In this section, the provisions of previous and current criminal procedure laws are examined and analyzed.

a. Analysis under the 1911 Code of Criminal Procedure

Article 316 of the 1911 Code of Criminal Procedure specified three scenarios in which a judgment would be considered in absentia: (1) the trial notice was not personally served on the accused; (2) the accused or their attorney failed to submit a written defense; and (3) the accused or their attorney did not attend one of the hearings. It is noteworthy that this article applied only to misdemeanors (*janhā*), and in petty offenses (*khelāf*) handled by the Conciliation Courts (*maḥākem-e ṣolḥ*), judgments could be issued without summoning the defendant. Article 355 of the same Code provided that criminal court judgments of the provincial criminal court were always considered *in personam* (non-default). In these cases, if appellate review was conducted without the defendant or attorney present, the ruling could still be appealed (for cassation) from the date of actual service. Thus, initially, trials in absentia for felonies (*omūr-e jenāyī*) were impermissible, and the presence of the defendant was mandatory. However, the 1959 Act on Permitting In Absentia Proceedings in Felonies introduced the possibility of trying felony cases in absentia (Ashouri, 2009).

b. Analysis under the 1999 Code of Criminal Procedure for Public and Revolutionary Courts

Article 217 of the 1999 Code allowed default judgments in all crimes related to *ḥaqq al-nās* and public order that lacked a divine-right element. Two conditions were provided: (1) the accused or their attorney failed to appear at any of the hearings, and (2) the accused or their attorney failed to submit a written defense. Under this law, personal service of the summons on the defendant or their attorney did not necessarily make the judgment non-default (Goldoost Jouybari, 2010).

c. Analysis under the 2013 Code of Criminal Procedure

The current Code recognizes two conditions under which a court's ruling is deemed in absentia: (1) the accused or their attorney fails to appear at any hearing, and (2) the accused or their attorney fails to submit a written defense. In these cases, if the court issues a conviction, the defendant has twenty days from the date of actual service to file a *wākhwāhī* (objection) before the same court. "Hearings" refer to sessions formally convened under the law and do not include investigative sessions held by the prosecutor's office. Default judgments apply to convictions but not to acquittals or dismissals, which are always deemed *in personam* (Khaleghi, 2016).

4. Procedures and Formalities in In Absentia Proceedings

This section evaluates the practical steps and legal framework governing the conduct of criminal proceedings when the accused is absent, with reference to the merits and shortcomings of existing and historical rules. Summoning procedures have historically varied depending on the nature of the crime and the applicable legal framework.

4.1. Analysis under the 1911 Code of Criminal Procedure (as amended in 1958)

Article 273 provided that if the accused failed to appear within the legal period without valid excuse and without appointing an attorney, the court could proceed in absentia. Importantly, the accused had to be summoned, and if a valid excuse was communicated, the court was obliged to re-summon them. However, attendance was not mandatory before the Conciliation Courts for petty offenses. Judgments in minor offenses (*omūr-e janhā-ye kuchak*)—whether default or in person—were only appealable through ordinary review (*pazhuhesh*), and the law did not grant the right to *wākhwāhī* for such cases. This approach aligned with the principle of expediting litigation and avoiding unnecessary delays (Ashouri, 2009).

4.2. Analysis under the 1959 Act on In Absentia Proceedings for Petty Offenses

According to the single-article law, in all petty offenses, courts could issue judgments in absentia without summoning the accused, based solely on the available evidence in the case file. The accused retained the right to object; however, if the objection was found unsubstantiated, they were ordered to pay between 50 and 200 rials as litigation costs. It appears the legislator, by imposing a financial penalty for baseless objections, aimed to discourage frivolous challenges intended merely to delay proceedings and avoid enforcement of judgments. This mechanism was one of the notable strengths of the law in promoting expeditious adjudication and preventing unnecessary prolongation of the judicial process (Dehghani, 2004).

Procedures and Adjudication in Misdemeanor Courts

According to the provisions of the 1911 Code of Criminal Procedure, as amended in 1958, if the accused failed to appear without a valid excuse and without appointing an attorney, and the court deemed the accused's presence unnecessary, the trial would proceed, and judgment would be rendered in absentia. If the court had previously served proper notice of the hearing and the accused did not justify their absence, the court could adjudicate in their absence. Among the advantages of this law were the requirement that a judgment be considered *in personam* if service was made personally to the defendant, the establishment of a ten-day period for objection and *wākhwāhī*, and the absence of an absolute obligation to secure the defendant's physical attendance at trial. These features were reasonable and logical, promoting expedited criminal proceedings and preventing undue delays (Ashouri, 2009).

Procedures and Adjudication in Provincial Criminal Courts

Under the same 1911 Code with the 1958 amendments, trials in absentia were not allowed in felony cases; judgments of provincial criminal courts were always considered *in personam* and subject only to cassation review. If the accused did not appear, the case would remain open regarding that individual. Later, the 1959 Act Permitting In Absentia Proceedings in Felonies introduced specific conditions for trying felonies without the defendant's presence: (1) the accused had absconded and could not be summoned or apprehended for the preliminary hearing or trial; (2) the court found the defendant's presence unnecessary for adjudication; (3) the prosecutor did not request the case to be returned for renewed efforts to summon or arrest the defendant—if such a request was made, in absentia trial was barred; and (4) required formalities were fulfilled. These formalities included:

(a) appointment of legal counsel for the absent defendant;

(b) issuance of a default proceeding order;

(c) publication of the default proceeding order twice, ten days apart, in the Official Gazette and a widely circulated local newspaper;

(d) an interval of two months between the final publication and the date of trial (Ashouri, 2009).

Procedures under the 1999 Code of Criminal Procedure for Public and Revolutionary Courts

Article 115 of the 1999 Code concerned the summoning of absent defendants during preliminary investigations. Regarding the trial stage, Article 180 provided that adjudication in absentia was permissible under specific conditions: (1) the defendant was inaccessible; (2) the defendant could not be summoned or apprehended because their place of residence was unknown; (3) the required formalities for summoning were properly followed. Such formalities required public notice of the trial date and the nature of the accusation in a widely circulated national or local newspaper, followed by a one-month waiting period from the date of publication (Goldoost Jouybari, 2010).

Procedures under the 2013 Code of Criminal Procedure

With the reintroduction of the prosecutor's office in 2002, the methods of summoning absent or unknown defendants diverged between the prosecution stage and the trial stage.

4.3. Summoning Procedure and Conditions by the Prosecutor's Office

Under Article 174 of the 2013 Code, if the following conditions exist, the defendant is summoned via publication in a widely circulated national or local newspaper: (1) the defendant's residence is unknown; (2) efforts to locate the defendant have failed; (3) no alternative means of service is possible. The defendant is granted one month from the publication date to appear. It is advisable, though not explicitly required by statute, that the complainant's details and a brief summary of the supporting evidence also be included in the public notice to better protect the defendant's right to defense (Khaleghi, 2014).

Proceedings Without Special Summoning Formalities

Although in principle an unknown defendant must be summoned through newspaper publication when their address cannot be found, some exceptions exist where such publication is unnecessary. One example concerns the Law on the Issuance of Cheques: according to Article 22 of the 2003 Cheque Issuance Law, the last address provided by the defendant to the drawee bank is deemed their legal domicile, and failure to locate them there does not require newspaper publication. Another instance occurs when a defendant initially appears before the prosecutor and declares an address but later deliberately relocates to an unknown location to delay or complicate service. In such cases, service at the previously declared address is valid without requiring newspaper publication (Khaleghi, 2016). The same rule applies when preliminary investigations are conducted by the court itself. This interpretation fosters expeditious adjudication and avoids unnecessary formalities that could delay the judicial process.

5. Procedures and Formalities for In Absentia Proceedings in Criminal Courts

In the area of addressing the charges of absent defendants in criminal courts, different sets of procedural rules exist. First, the procedures applicable in Criminal Courts of First Instance, Division Two (Kifāri-ye Do) are examined, followed by those in Criminal Courts of First Instance, Division One (Kifāri-ye Yek).

a. Procedures in Criminal Courts Division Two

From the content of Articles 344 and 345 of the 2013 Code of Criminal Procedure, it can be inferred that proceedings in Criminal Courts Division Two may be conducted in the absence of the accused if the following conditions are present:

1. Service of the summons is impossible because the accused's residence is unknown.
2. Service of the summons through alternative legal methods is not feasible.
3. The case file is complete and procedurally ready for trial.
4. The trial notice has been published in one of the widely circulated national or local newspapers.
5. At least one month has passed since the publication of the notice.
6. The court considers the defendant's presence unnecessary for adjudication.
7. The alleged offense does not have a *ḥaqq Allāh* (divine right) dimension.

This same procedure also applies in Revolutionary Courts (*Maḥākem-e Enqelāb*) when they adjudicate offenses with a single judge. These conditions are designed to protect the defendant's procedural rights while also maintaining the efficiency and timeliness of proceedings (Ashouri, 2009).

b. Procedures in Criminal Courts Division One

1. Preliminary Administrative Hearing

In these courts, representation by an attorney is generally mandatory. According to Articles 387 and 388 of the 2013 Code of Criminal Procedure, the court must notify the defendant to appoint counsel, and if the defendant fails to do so, the court appoints an attorney on their behalf. The defendant must also be warned to raise any objections or remedy procedural deficiencies within ten days.

If the accused has absconded or cannot be reached and their summoning or arrest for the preliminary administrative hearing is impossible, and if the court deems the defendant's presence unnecessary for adjudication, the preliminary administrative session is held in their absence, and the court proceeds with the case. The statutory text suggests that when the accused is absconded or unreachable, there is no obligation to serve them by public notice. This current practice of Criminal Courts Division One effectively expedites litigation and prevents undue delays (Khaleghi, 2016).

2. Main Hearing and Default Judgment Procedures in Division One

Once the court deems the case file complete, it issues an order to proceed to trial. The circumstances under which the court may adjudicate in absentia include:

1. The defendant is absconded.
2. The defendant is unreachable.
3. Summoning or arresting the defendant for trial is impossible.
4. The court determines that the defendant's presence is not essential for a fair trial.
5. The prosecutor, though capable of attempting further service or arrest, has not requested additional time to do so; if requested, a maximum 15-day extension may be granted.
6. A formal *order of in absentia proceedings* is issued by the court.

Such an order must explicitly include:

- The charges, the trial date, and the consequences of non-appearance.
- Publication of the trial notice twice in a widely circulated national or local newspaper.
- At least a ten-day interval between the two publications.
- At least one month between the final publication and the trial date.

These same requirements also apply to Revolutionary Courts when multiple judges are mandated to hear the case (Ashouri, 2009).

Formalities for Summoning Absent Defendants in Military Courts

Military courts, which have special jurisdiction over offenses committed by members of the armed forces, follow additional formalities. Under Article 616 of the 2013 Code of Criminal Procedure, if it is impossible to serve a summons on a military defendant, they must be summoned by publication in a widely circulated newspaper. Moreover, such summons must be approved by the head or deputy head of the provincial military judiciary.

An exception exists for desertion cases: according to Note to Article 616, service at the last known address of the defendant on record with the personnel office of their military unit is considered legally valid. In such cases, the court may proceed without resorting to newspaper publication. This approach is a practical innovation by the legislator, designed to accelerate proceedings and prevent unnecessary delays (Khaleghi, 2014).

Formalities for In Absentia Proceedings before the Dispute Resolution Council (Shorā-ye Ḥal-e Ekhtelāf)

The Dispute Resolution Council is primarily competent for minor civil disputes but also adjudicates certain petty and pardonable criminal offenses. Hearings before the Council, in terms of jurisdiction, the right to defense, and evidentiary evaluation, follow the general rules of civil and criminal procedure.

With respect to summoning, Articles 18 and 28 of the Council Law state that criminal summonses must comply with the Code of Criminal Procedure, and where those rules are incomplete, the Civil Procedure Code applies. Under Article 25 of the Council Law, judgments are deemed *in personam* unless the prevailing party or their attorney failed to attend any hearing or

file a written defense. Personal service of the summons alone does not automatically make the judgment non-default. This provision aligns with the criminal procedure framework but is seen as one of the weaknesses of the Council system because it may lead to unnecessary prolongation of proceedings and delays in the administration of justice (Dehghani, 2004).

6. In Absentia Proceedings in Islamic Jurisprudence (Fiqh)

In Islamic law, litigation is fundamentally adversarial, conducted with the presence of both parties and directly before the judge. A central question is whether adjudication and judgment in the absence of the accused are permissible. In *fiqh*, crimes are classified into *ḥaqq Allāh* (rights of God), *ḥaqq al-nās* (rights of individuals), and mixed cases containing both dimensions. In general, according to Shi'a jurists, in absentia proceedings are not permitted for *ḥuqūq Allāh* (divine rights). However, in cases concerning *ḥuqūq al-nās* and discretionary punishments (*ta'zīrāt*) without a divine-right component, trials in absentia are allowed.

The basis for permitting in absentia adjudication in such cases derives from hadith and narrations discussed extensively in *fiqh* sources (Sangalaji, 2010). The primary reasons for the prohibition of in absentia proceedings in divine-right crimes are (1) the general principle that litigation should be conducted in the presence of the parties, (2) the consensus (*ijmā'*) of jurists, and (3) prophetic traditions such as the statement of the Prophet (peace be upon him): "Hudūd (fixed punishments) are averted in cases of doubt," which supports safeguarding the accused's presence in divine crimes. If a case involves both *ḥaqq al-nās* and *ḥaqq Allāh*, in absentia judgment is permissible regarding the *ḥaqq al-nās* aspect (Mohajeri, 2006).

In *fiqh*, the principle of in-person litigation is not absolute and admits exceptions. Sacred law recognizes the claimant's right to pursue litigation even in the absence of the defendant under certain conditions (Mohajeri, 2006).

Procedural Formalities of In Absentia Proceedings in Fiqh

Islamic jurists have not provided a fully systematized and unified doctrine regarding the formalities required for in absentia trials. Many jurists who recognize the permissibility of in absentia proceedings maintain that if the plaintiff (*mudda'ī*) produces valid evidence (*bayyina*), the judge may issue judgment in favor of the plaintiff and against the absent party. Even where summoning is possible or the defendant's absence is justified, some jurists cautiously allow in absentia adjudication but express doubt due to the importance of protecting the absent party's right to defense and adequate notice (Khomeini, 1987).

Sayyid Abū al-Ḥasan al-Ḥā'irī Ṭabāṭabā'ī states in *Riyāḍ al-Masā'il*: "It is judged against the absent with evidence, but the absent retains the right to defend himself when he returns" (Ha'eri Tabataba'i, 1997). A narration from Imam al-Ṣādiq (peace be upon him) says: "It was seen that judgment can be rendered against the absent if proof is established, but the absent retains the right to bring forward his defense when present" (Mohajeri-Pourarab, 2002).

From the jurists' writings and hadith, two fundamental principles emerge:

1. A judgment cannot be issued merely because a claim was filed by the plaintiff; adequate proof is required.
2. Once a valid judgment is issued based on evidence, a mere objection by the absent defendant, without presenting counter-evidence, does not invalidate the judgment and does not justify automatic retrial (Kāẓemi Gilvardi-Alizadeh, 2012).

The principal hadith relied upon by jurists permitting in absentia judgments is that of Jamīl b. Darrāj, attributed to Imams al-Bāqir and al-Ṣādiq (peace be upon them): "If proof is established against the absent, judgment shall be rendered, his property may be sold, and his debts may be paid while he is absent; but if he returns, he retains the right to present his evidence." (Āmilī, 1980). This text has been decisive in shaping the Shi'a legal doctrine.

Some jurists argue that a claim against an absent defendant must always be accompanied by *bayyina* (witness testimony or evidence) and that unproven claims cannot be heard under any circumstances (Kāẓemi Gilvardi-Alizadeh, 2012). Other scholars caution that judgments rendered in absentia are not absolutely final in the sense of denying the defendant's future right to contest and provide evidence (Mohaghegh Damad, 1986). Some contemporary jurists require proof to establish that the defendant is genuinely absconded before accepting a plaintiff's claim (Hosseini Shirazi, 1988).

7. The Role of Defense Counsel in Determining In Personam vs. In Absentia Judgments

A critical procedural question is whether the presence of an attorney or submission of a defense brief by counsel renders the judgment *in personam* rather than *in absentia*. The issue arises as to whether this applies only to defense attorneys personally appointed by the accused or also includes court-appointed (mandatory) counsel.

The law uses a general and unrestricted wording, which has led to two judicial interpretations:

- **First view:** Because the statute is absolute, the presence of a court-appointed (*tasḥīrī*) lawyer or the submission of a defense by such counsel renders the judgment *in personam*. Several legal advisory opinions of the Judiciary (No. 7/3020, July 23, 2001; No. 7/1220, May 16, 2006; No. 7/286, April 13, 2009) support this interpretation, affirming that judgments issued with the participation of *tasḥīrī* counsel are considered non-default.
- **Second view (dominant in the Supreme Court):** Since the defendant has no role in selecting the court-appointed lawyer and may have no communication with them, appointing counsel merely satisfies procedural safeguards without eliminating the defendant's personal right to defense and objection. Thus, a judgment rendered in the presence of a *tasḥīrī* lawyer remains *in absentia*, and only the convicted person—not the court-appointed lawyer—may file an objection (*wākhwāhī*). Legal Advisory Opinion No. 7/1740 (June 6, 2006) and current Supreme Court practice affirm this position.

This latter approach aligns more closely with the philosophy behind recognizing the right of *wākhwāhī*, the principle of personal defense, and the broader concept of fair trial (Aqaei Jannat Makan, 2017).

8. Effect of the Defendant's Presence or Absence After Annulment of a Judgment on Its In Personam or In Absentia Nature

When a judgment is annulled by a higher judicial authority and the case is remanded to the same trial court or to a parallel chamber, an important procedural question arises: does the defendant's previous attendance or submission of a written defense suffice to render the new judgment *in personam* (حضوری), or must the defendant appear again or file a new defense brief before the new court?

According to one prevailing legal opinion, once a judgment is annulled, all prior proceedings and appearances lose their effect, and the defendant must attend the new hearings or submit a defense for the new judgment to be deemed *in personam*. Legal Advisory Opinion No. 7/609 (December 8, 2007) of the Judiciary's Legal Department confirms this position, stating that absence of the defendant in the re-heard case after annulment renders the subsequent judgment *in absentia*. Previous defenses related to the annulled judgment cannot make the new ruling *in personam* (Ashouri, 2009).

Nevertheless, some jurists and practitioners argue that where the annulment was due to procedural deficiencies unrelated to the defendant's defense (such as incomplete investigation) and the defendant had already presented full defenses previously but, despite renewed notification and reasonable opportunity to appear, chose not to attend or file new submissions, the prior defenses could still suffice to consider the subsequent judgment *in personam*. This view is aimed at accelerating proceedings and preventing undue delay, aligning with the principle of speedy trial (Khaleghi, 2016).

9. Statutory Factors Contributing to Delay in In Absentia Proceedings

Multiple factors contribute to delays in adjudication, some attributable to statutory design and others to litigants or structural and human issues. Below, key legislative factors causing prolongation of in absentia litigation are analyzed.

a. Restricting the Scope of In Personam Judgments and Expanding In Absentia Rulings

Under the 1911 Code of Criminal Procedure, the legislator permitted adjudication of petty offenses (*omūr-e khelāfī*) without summoning the defendant, and there were no elaborate formalities for such proceedings. Moreover, by excluding *wākhwāhī* (objection) in these minor matters and only allowing ordinary appeal, the law effectively prevented delay and procedural abuse.

However, in the 1958 amendments and the 1959 Act on In Absentia Proceedings in Felonies, the legislator recognized actual personal service of hearing notices as grounds for deeming judgments *in personam*. In contrast, the 1999 and 2013 Codes of Criminal Procedure took a regressive step by narrowing the scope of *in personam* rulings and broadening the circumstances in

which judgments are deemed *in absentia*. For example, under current law, even if the summons has been personally served on the defendant, failure to appear still leads to a default judgment.

This legislative expansion of default judgments contradicts the principle of speedy trial and allows defendants to misuse procedural gaps to delay proceedings, harming the complainant's right to timely justice (Dehghani, 2004). Given the philosophy behind in absentia judgments, it would be more consistent with fairness and efficiency to treat judgments as *in personam* whenever the defendant has received actual notice of the hearing and still chooses not to appear. Notably, civil procedure treats personal service as sufficient for *in personam* rulings, raising the question of why criminal procedure departs from this logic.

b. Extending the Period for Objection (*Wākhwāhī*)

Before the 2013 Code of Criminal Procedure, the objection period for default judgments was uniformly ten days from actual service, both before and after the 1979 Revolution. Although the 2013 Code strongly emphasizes speed in litigation—explicitly instructing courts to avoid any delays—it paradoxically lengthened the objection period.

Article 406 of the 2013 Code now allows twenty days for residents inside the country and two months for residents abroad to file *wākhwāhī* against a default judgment. Additionally, if the judgment was served legally but not actually, the defendant can object within twenty days from when they claim to have become aware of the judgment. Awareness is subjective and must be proven by evidence; if there is no proof of awareness, the law presumes ignorance.

This expansion of objection deadlines conflicts with the principle of speed and efficiency in criminal proceedings and undermines the complainant's rights, particularly when the defendant had prior knowledge of the charges and evidence during the investigative stages (Khaleghi, 2016).

c. Acceptance of Unqualified Objections

A sound and widely accepted principle, rooted in reason and endorsed by both jurists and legislation, is that convictions must be well-grounded and reasoned, and that objections should be substantiated. Former laws explicitly required that *wākhwāhī* be reviewed immediately; if the defendant's reasons and evidence were insufficient to invalidate the default judgment, the court could reject the objection without setting a hearing.

In contrast, under Article 407 of the 2013 Code, any objection—regardless of merit—is automatically accepted and triggers a full hearing. This approach disregards the previous efficiency-focused model, lengthens proceedings, and gives defendants the opportunity to file frivolous objections, delaying final resolution (Ashouri, 2009).

d. Mandatory Hearing for Every Objection

Earlier, under Article 218 of the 1999 Code of Criminal Procedure, courts would first examine the objection and supporting evidence; if the reasons were unfounded, they could summarily reject the *wākhwāhī* without holding a hearing. A hearing was only required if the objection raised serious grounds or further investigation was necessary.

The 2013 Code reversed this, making hearings mandatory for every *wākhwāhī* regardless of merit (Article 407). This lack of screening for frivolous objections delays adjudication, burdens courts, and allows defendants to exploit procedural loopholes, contradicting the fundamental principle of swift justice and undermining victims' and society's right to timely enforcement (Aqaei Jannat Makan, 2017).

Overall, these legislative trends—expanding the scope of default judgments while simultaneously making objections easier and more time-consuming—have paradoxically weakened the efficiency of criminal procedure. They delay final judgments, frustrate complainants' access to justice, and create opportunities for abuse by defendants, undermining the very purpose of in absentia adjudication, which is to ensure justice without unnecessary delay.

10. Conclusion

One of the most critical areas where time considerations play a decisive role is in absentia proceedings. It is essential to establish a procedural mechanism that strikes a fair balance between the rights of the parties and the collective interest of society. Under the current legal framework and general principles, the key criteria for classifying a judgment as *in absentia* remain the absence of the defendant and their attorney at the hearing and the lack of any defense submission. Conversely, the defendant's presence at the trial is not absolutely mandatory except in exceptional cases. Merely appearing without defending, exercising the right to remain silent (as accepted by law and international instruments), or submitting a brief without addressing

the merits of the case or challenging the complaint is sufficient to render the judgment *in personam* and remove the right of *wākhwāhī*.

On the other hand, the complainant and the prosecutor are responsible for filing the case and presenting evidence, while the judiciary—as the representative of the state and society—is responsible for informing the defendant of the charges and providing reasonable time to appear and prepare a defense, and then adjudicating as quickly and efficiently as possible. From the standards and analogies established in law, it can be inferred that what truly matters is the defendant's awareness of the charges and evidence. The mere physical presence or absence at the hearing has no independent procedural value if the defendant has been duly informed and given a meaningful opportunity to defend.

Logic and fairness require that once it is established that the defendant knew about the complaint and the supporting evidence, and despite being given the chance to appear and prepare a defense either before the court or during the preliminary investigation stage, they chose not to attend or fled after initial presence, then granting additional opportunities without rational justification would unfairly disadvantage the complainant and society. Such unnecessary procedural leniency delays justice, undermines public trust, and weakens deterrence. Expeditious adjudication is itself a societal right; prolonged trials can cause public disengagement and reduce the effectiveness of the judiciary's response.

Furthermore, reason and legal logic—reinforced by Islamic jurisprudence and supported by statutory principles—require that judgments be well-reasoned and objections well-founded. Earlier laws provided that upon receiving an objection to a default judgment, courts would first assess its merit: if the defense was manifestly irrelevant or lacked supporting evidence, the court could immediately uphold the original ruling without setting a new hearing. Only if the objection raised substantial doubt or required further investigation would a hearing be scheduled. In addition, previous laws limited the objection period to ten days from actual service of the judgment, ensuring timely resolution.

By contrast, the 2013 Code of Criminal Procedure extended objection periods without clear justification and required courts to hold a full hearing for any objection, even if baseless. This expansion contradicts the principle of speedy trial and leads to procedural inefficiency and delay, harming victims and society.

To improve fairness while ensuring efficiency, the legislator could adopt differentiated policies and enforceable safeguards: for example, treating actual knowledge of charges as sufficient to render a judgment *in personam*, screening out meritless objections before scheduling hearings, and maintaining stricter, reasonable deadlines for objections. Such reforms would promote balanced justice—protecting defendants' essential rights while preserving the complainant's and society's right to swift, effective adjudication. Quicker proceedings would also reduce litigation costs, optimize the use of judicial resources, and discourage individuals from resorting to private justice outside the legal system.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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