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An Economic Analysis of Iran's 2017 Judicial System Reforms: Ways with Long-term Effects to Improve Judicial System's Litigation Delay¹

**Analiza ekonomiczna reform systemu sądownictwa w Iranie
z 2017 roku: sposoby wprowadzenia długoterminowych efektów
poprawy opóźnień w procesach sądowych**

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Abstract: Litigation delay is a serious concern for judicial systems. In 2017, Iran enacted regulations for digitizing the judicial system in order to address this problem. This article shows whether this new policy has been an efficient move and shows solutions with more long-term results for overcoming the litigation delay. To analyze the recent reforms efficiency, I review Iran's dispute resolution performance using secondary data from Doing Business research and the Research Center of the Iranian parliament reports in measuring the doing business environment from 2016, before adopting those regulations, and then until 2019. Finally, it is concluded that Law & Economics methodology is suitable for analyzing the efficiency of 2017 Iran's policy, which also provides ways to achieve more sustainable results to overcome the litigation delay. The main finding of this study is that according to the Kaldor-Hicks efficiency, Iran's recent reforms related to digitizing the judicial system have

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been an efficient move; however, due to the nature of these reforms, this efficiency does not last permanently.

Keywords: judicial system, World Bank, efficiency, Kaldor-Hicks, law and economics

Abstrakt: Opóźnienia w procesach sądowych są poważnym problemem dla systemów sądowniczych. W 2017 roku Iran wprowadził przepisy dotyczące cyfryzacji systemu sądownictwa w celu rozwiązania tego problemu. Artykuł pokazuje, czy nowa polityka była skutecznym ruchem i przedstawia rozwiązania o długoterminowych skutkach dla przezwyciężenia opóźnień w procesach sądowych. Aby zbadać efektywność niedawnych reform, autor analizuje wydajność rozwiązywania sporów w Iranie, korzystając z danych wtórnych z badań Doing Business oraz raportów Centrum Badań parlamentu irańskiego, w celu pomiaru środowiska biznesowego od 2016 roku, przed wprowadzeniem tych przepisów, a następnie do 2019 roku. Dochodzi się do wniosku, że metodologia Prawa i Ekonomii jest odpowiednią metodologią do analizowania efektywności polityki Iranu z 2017 roku, która również przedstawia sposoby osiągnięcia bardziej trwałych wyników w przezwyciężaniu opóźnień w procesach sądowych. Głównym wynikiem tego badania jest to, że według efektywności Kaldora-Hicksa niedawne reformy Iranu związane z cyfryzacją systemu sądownictwa były skutecznym ruchem, jednakże, ze względu na charakter tych reform, ta skuteczność nie jest trwała.

Słowa kluczowe: system sądownictwa, Bank Światowy, efektywność, Kaldor-Hicks, Prawo i Ekonomia

Introduction

One of the topics in the discussion of judicial system reform in almost every legal system worldwide is the issue of litigation delay (Miller 1995: 112). Consequences of court delay include deteriorating evidence and reducing the likelihood of justice being done, wasting court resources and attorney time, increasing legal fees, and ultimately losing public confidence in the judicial system (Fenn and Rickman 1999: 476).

The destructive impacts of the delay have led scholars to research its reasons and suggest solutions in order to reduce it (Varano 1997: 527-559; Priest 1989: 527-559). In the U.S., the National Center for State Courts conducted the country's first and most comprehensive effort to examine the reasons for litigation delay in state courts in 1976 (Sarat 1978: 324). In addition, professor Varano examines this major concern by stating that an average of twelve or thirteen years is perfectly normal for a final settlement of a civil dispute in Italy (Varano 1997: 527-559). Litigation delay is also one of the oldest problems in the Iranian judicial system (Darabi and Rafiei Tabatabaei 2020: 46-65). Although, according to Sipes, there is no generally accepted definition of court delay (Sipes 1985: 299), this problem is defined by Iranian scholars as an unusual and unreasonable amount of time spent on a case (Rafiei Tabatabaei 2020: 46-65).

tabaei 1996: 31). Many studies have been done in Iran to find the root causes of litigation delay and also its consequences. In his study, Professor Roshan considers judges and their lack of sufficient knowledge, skills, and expertise to be the leading causes of delayed proceedings in Iran (Roshan et al 2015: 71-111). However, Judge Ebrahimi introduces the plurality of laws and regulations, which sometimes even contradict each other, as the main factors of litigation delay in Iran (Ebrahimi 2000: 168-173). Rafiei also argues that the most important reason for the litigation delay in the Iranian courts is the result of incorrect filing of lawsuits caused by people's lack of legal knowledge. He believes that providing proper information to people and making it mandatory to use the services of lawyers is fundamental to solving this problem (Rafiei Tabatabaei 1996: 32). According to Moqadam, however, the key factor in litigation delay, which is the most important current challenge and concern of the people and the judicial system of Iran and indicates the failure to achieve the highest goals of the judiciary, is the managerial weakness of those directly involved in the dispute resolution process (Jorjandi Moqadam 2021: 1).

Many scholars working on this ongoing problem in the Iranian judicial system have tried to suggest ways to solve and rout it out. However, their proposals often revolve around subjects such as hiring trained and experienced judges (Tayebi 2017: 1-18; Mokhtarifard 2016: 50), specializing the courts based on the cases, and building more courts (Safaie 2013: 1-3; Dadgarnia 2013: 7), and mostly and recently digitizing the proceedings. Examples of digitalization of the judicial system are filing a lawsuit, uploading documents, and receiving court fees electronically, accepting the electronic signature, providing the tracking number for tracking the proceedings online and using software for archiving judgments and cases (Vaezi, Khandani, and Khaleqian 2020: 363-372; Allah Yari Nik, and Shabannia Mansour 2022: 70-11; Qamami, and Abdollahian 2019: 29-54; Zadeh Hosein Oliyayi, and Ahmadi 2018: 117-136).

The prevailing hypothesis that the digitalization of the Iranian judicial system positively reduces delays was also reflected in recent regulations in Iran. Since the early 2000s, Iranian judicial leaders have taken significant steps to defeat this delay in the judicial system. The latest milestone was in 2017 when different regulations were enacted to digitize this system (Zadeh Hosein Oliyayi, and Ahmadi 2018: 120-121). The regulations that were enacted in order to speed up judicial proceedings in Iran in 2017 are "Regulations on the Use of Computer or Telecommunication Systems", Article 117 of the "Law of Sixth Five-Year Plan for Economic, Social and Cultural Development of Iran"² and

² Under this article, to reduce the delay in the execution of judgments, the judiciary is obliged to provide the possibility of immediate and online response to inquiries required by the judicial au-

“The Executive Regulations for the Establishment of Electronic Judicial Services Offices and their Centers”. From the titles of these regulations, it can also be easily realized that these rules indicate the reforms of the judicial system in order to digitize.

More precisely, the “Regulations on the Use of Computer or Telecommunication Systems”, stipulates that the Judiciary Statistics and Information Center has designed and launched a system called Judicial Electronic Services System. And filing lawsuits, notifying the parties and their lawyers about the time of the court hearing, and sending the bill are done through this system.³ According to Article 117, the Judicial system became in charge of creating an electronic system program that would provide the possibility of immediate and online response to the inquiries required by the courts regarding the property of convicts through online access to all databases of their property, so that the seizure of property can be done quickly.⁴ In the “Executive Regulations for the Establishment of Electronic Judicial Services Offices”, the judicial services portal has been introduced as an entrance for starting and tracking judicial affairs in cyberspace.

Despite many suggestions from researchers, including the most frequent one, the digitalization of the judicial system, which is also reflected in the recent Iranian regulations in 2017, little attention has been paid to the fact that this proposal solves the problem of court delays only temporarily or has a long-term effect. In addition, almost no study has been conducted so far using Law and Economic approach to examine the efficiency of the recent reforms of the Iranian judicial system in 2017, which were applied to reduce delays in proceedings and speed up the settlement of cases.

In relationship to these gaps, by applying Law and Economics methodology in this paper, I argue that the new policy in 2017 in the Iranian judicial system is an efficient move according to the Kaldor-Hicks criterion. However, these kinds of reforms temporarily reduce the delay and have the opposite effect for a long time. Because based on my economic analysis of Doing Business research and the Iranian parliament reports,⁵ these reforms lead to more total

thorities regarding the property of convicted persons. This article is adopted to make the execution of judgments quickly and easily.

³ Regulations on the Use of Computer or Telecommunication Systems (entered into force in 2017) available at < <https://dgla.ut.ac.ir/fa/page/2945/ای-ی-اهن-ای-ار-ی-اه-هن-ام-اس-زا-هدافتس-ا-هو-حن-م-ان-نی-ی-آ> >, articles 1-32.

⁴ *Law of Sixth Five-Year Plan for Economic, Social and Cultural Development of Iran* (entered into force in 2017) available at < <https://www.rrk.ir/Files/Laws/20%مشارکت%20در%20اقتصاد%20ایران%20تا%20سال%201394.pdf> >, article 117.

⁵ I examined the “Index of the weakness of the courts in handling lawsuits and forcing the parties to the contract to fulfill their obligations”, which is reflected in the Research Center of the Iranian

welfare; however, according to rational choice theory, individuals following the ease of filing the lawsuits and reducing delays in dispute resolution become encouraged to file more lawsuits. In this case, the number of lawsuits entering the judicial system will increase, and this congestion will reduce the speed of dispute resolution again.

In this way, I suggest two main ways to achieve long-term goals that reduce delays in the judicial system sustainably: (1) determining equal or lower pre-judgment interest than the market profit rate and (2) enacting rules facilitating the peaceful settlement of disputes.

In this paper, in Section 1, I describe the Law & Economics methodology, the concept of efficiency from Kaldor-Hick's perspective, and rational choice theory. In Section 2, based on World Bank-Doing Business research results, I first extract the data and then examine the performance of the Iranian judicial system in Enforcing Contracts Index by emphasizing the Time indicator first in 2016 and then in 2018 and 2019.⁶ Moreover, I analyze the data extracted using Law & Economics methodology to estimate Iran's judicial system's total gains and losses in the years mentioned earlier. And then, I examine whether these new regulations to reduce the delay of the proceedings have put the Iranian judicial system in an efficient position according to the Kaldor-Hicks criterion. In Section 3, based on Iranian Parliament reports regarding the Iranian business environment, I examine the performance of the Iranian judicial system in the Weakness of the Courts in Handling Lawsuits Efficiently and Without Litigation Delay from 2016 until 2019. And I review that, like the analysis obtained from international data, the analysis of national data also indicates the efficiency of Iran's judicial system in resolving disputes after Iran's 2017 policy. In Section 4, by emphasizing that recent regulations only temporarily reduce litigation delay, I suggest methods with long-term benefits in reducing court delay.

1. Methodology: Law and Economics

Law and Economics refer to a methodology in which economic theory (basically microeconomics) is applied to analyze the formation, structure, procedure, and economic effects of law and legal institutions (Trebilcock 1997: 123-124). During the last two centuries, discussions have been raised by economists

parliament in measuring the business environment in Iran. Internationally, I also used the World Bank doing Business Report and its enforcing contract indicator. These two indicators are closely related to each other. Both reflect the judgment of economic organizations on handling a case in the judicial system and dispute resolution.

⁶ I do not review 2017's data since in that year, the new regulations which their effects are being examined in this research, were enacted.

such as Adam Smith on the role of legal rules in institutions and economic relations and the legal rights of economic systems, which indicates the special relationship between economics and law (Trebilcock 1997: 123). These studies since the 1960s have faced significant changes and, with the publication of Ronald Coase's article (Coase 1960: 1-44), entered a new stage. A practically new methodology emerged from this date called the economic analysis of law or law and economics (Babaie 2007: 15).

The characteristic of law and economics is (1) the application of economic analysis tools, specifically microeconomics and prices, in legal issues. In this methodology, legal rules are considered as the implicit price of goods and services, and the reaction of individuals or organizations to legal rules can be analyzed in the same way that the response to prices is analyzed (Cooter and Ulen 2016: 3-4). (2) Law and economics consider efficiency as the primary goal and parameter of legal rules. This methodology analyzes legal rules based on their degree of efficiency and proposes creation or amendment of rules to achieve greater efficiency (Parisi 2004: 264). (3) In this methodology, the "rational choice approach" – which is the basis of microeconomic theory – is considered the key to understanding the behavior of humans and organizations. Under this approach, it is assumed that people and institutions act rationally (Pacces and Visscher 2011: 1-3). (4) Law and economics scholarship employs two conceptually different kinds of analysis under conditions of scarcity, including constraints imposed by the legal system: Positive and Normative analysis. Indeed, this methodology seeks to express and answer two fundamental questions about legal rules: a question that has a descriptive aspect and explains the effects of legal rules on the behavior of individuals and organizations (positive). Another question about what should be done and what should not that explains the purpose of a legal rule (normative) (Trebilcock 1997: 125-130). (5) Economic analysis of law is mainly based on the criterion of wealth, and the analysis of law's effects on the level of efficiency in society is based on the rate of increase in wealth (Parisi 2004: 261).

In this paper, I use Law and Economics methodology in order to examine the efficiency of the reforms in 2017 in the Iranian judicial system with the goal of reducing the delay of proceedings. In this regard, I explain the concept of efficiency and efficiency criteria in the first place.

The common definition of efficiency in economics is the study of how individuals and society are selected from the limited resources that can be used differently to produce different products and distribute them for present and future consumption. Efficiency is generally considered to be the maximum possible use of the resources and opportunities available to different units and agents, and in general, if there are the following two clauses, efficiency has been

achieved: (1) Possible to obtain the same amount of outputs at a lower cost or, in other words using fewer inputs. (Allocative efficiency), or (2) possible to produce more outputs with the same amount of input. (Technical efficiency) (Dadgar 2017: 109).

Thus, judicial efficiency means reducing costs and increasing the output of the judicial system through the management of courts and the litigation process, as well as reviewing procedures, time, and cost of handling a lawsuit to avoid wasting unnecessary costs on the part of the judicial system or the system as a whole. In other words, judicial efficiency means minimizing the waste of time or resources in the judicial system (Rosales-Lopez 2008: 234-235).

Therefore, the efficiency of dispute resolution means minimizing the waste of time or costs in the judicial decision-making process. For example, if the court hears two related cases together, then less time and money will be spent; dealing with them separately not only takes more time and money, but can also lead to conflicting verdicts and prolong the process. The judicial economy is focused explicitly on this issue. Therefore, the basic principle in the judicial economy is that the limited resources of the judiciary or a court should be saved and used properly (Qamami, and Abdollahian 2019: 32).

According to Posner, when the judges issue a verdict, they must also consider the subsequent effects of the rule and should also focus on increasing efficiency. Judges, therefore, are seen as the creators of futuristic rules who decide what rules to impose on both parties to the contract that is the most efficient outcome. In other words, how does a judge determine the most efficient situation (Zywicki 2008: 563-564)? Considering judges as the ones pursuing the highest efficiency raises the question of how a judge can identify the most efficient situation. Although the approach to law and economics is formed in the context of common law and judges have a significant role in creating its rules, in Iran, with a civil law background, this question seems equally important. Judges in Iran also have a degree of authority to make decisions in the context of efficiency (Babaie 2007: 18).

Because Principle 167 of Constitution⁷ allows Iranian judges to find a solution and decide on disputes in any way, and this is where judges have the opportunity to pay attention to efficiency and seek an efficient solution to justice. However, there is no denying that the role of the legislature in Iran in enforcing efficient regulations and changing laws and conditions towards efficiency is much more significant than that of judges.

⁷ Principle 167 of Iran's Constitution: "The judge is obliged to try to find the verdict of each lawsuit in the codified laws and if he/she does not find it, he/she will issue the verdict based on the valid Islamic sources or fatwas. A judge may not refuse to hear a case or issue a verdict on the pretext of silence or defect or brevity or conflict of laws."

Distinguishing the efficient status from an inefficient one, whether by a judge, legislator, or researcher, requires criteria so that if a defective status is found, researchers can suggest ways to achieve more efficiency or the situation can be changed to efficiency by a judge or legislator.

Among the criteria for evaluating efficiency from inefficient statuses, I choose the Kaldor-Hicks efficiency since, in this article I compare the losses and the gains of Iranian policy in 2017 to conclude whether the policy is efficient or not. This comparison is derived from the Kaldor-Hicks criterion. In practical terms, the Kaldor-Hicks criterion requires a comparison of profits and losses, and as long as the payoff outweighs the loss, a change is considered an efficient move (Pacces and Visscher 2011: 5).

2. The efficiency of 2017 Iran's policy based on international data

In this article and this section to analyze the efficiency of Iran's policy in 2017, which was aimed at reducing litigation delay, a part of the results obtained from the Doing Business project, specifically the data that indicates the time needed for Dispute resolution, is used.

The Doing Business was a significant project with an Ease of Doing Business Index, which tried to measure the impact of business regulations in countries around the world (McCormack 2018: 651). This project's rankings from 2004 to 2021 were published annually as a report by the World Bank Group (Theis 2021). In the original form, the Doing Business report examined five sets of indicators for 145 economies (McCormack 2018: 651), while the latest report contained 12 indicator sets for 190 economies (World Bank Group, Doing Business 2020: 1-135). The indicators are intended to be comparable across countries (Besley 2015: 102). There has always been criticism of this project, despite its importance. In the 2004 report, France was ranked 44th, and in this relatively low ranking, there was a shock and disappointment in France after having ranked below countries like Jamaica and Botswana. French commentators and organizations have strongly criticized the 2004 report for misunderstanding French law and legal culture. Ultimately, France's reactions appear to have been constructive in forcing the World Bank to reconsider some of its assumptions (McCormack 2018: 657). In addition, in 2008, an independent review panel at the World Bank recommended greater transparency in business reporting and some improvements in business practices. This panel also suggested that focusing on regulatory costs and burdens should be just one dimension of a particular country's overall investment climate reform. These criticisms were exacerbated in the 2013 World Bank review panel report. However, they helped the project on the path of reform and improvement (McCormack 2018: 658). Finally, due

to some data irregularities in Doing Business reports in 2018 for China and 2020 for Saudi Arabia, the United Arab Emirates, and Azerbaijan, this project was discontinued in September 2021. However, the Doing Business website remains publicly available as an archive of knowledge and data (Theis 2021).

One of the indexes that this project examined is Enforcing Contracts index measuring the time and cost of resolving a commercial dispute and evaluating whether each economy has taken good steps to improve the efficiency of its judicial system. The project collected information through a study of the codes of civil procedure, other court regulations, and questionnaires that local lawyers and judges completed. By sorting scores for enforcing contracts, Doing Business determined the ranking of economies on the ease of Enforcing Contracts. These scores are the simple average of the scores for each component indicator. The component indicators of Enforcing Contracts are first, the Time of resolving a dispute, second, the Costs of dispute resolution, such as attorney fees, fees of the official expert of the judiciary and enforcement costs, and third, the Quality of judicial processes. The dispute resolution time in this project is recorded in calendar days and starts from the moment the plaintiff decides to file a lawsuit in court and ends after payment. The waiting periods are included in the time of a dispute resolution.⁸

There are specific assumptions about the lawsuit considered in this project that the value of the claim is 200% of the economy's income per capita or \$5,000, whichever is greater. Moreover, the dispute concerns a legal transaction between two businesses (Seller and Buyer) located in the economy's most prominent business city. According to the contract, the seller sells some custom-made furniture to the buyer, which is worth 200% of the economy's income per capita or \$5,000, whichever is greater. After the seller delivers the goods to the buyer, the buyer rejects paying the contract price, alleging that the goods are not of adequate quality. The seller cannot sell them to anyone else as they are custom-made. The seller (the plaintiff) sues the buyer (the defendant) to recover the amount under the contract. The dispute is brought before the court located in the economy's largest business city with jurisdiction over commercial cases worth 200% of income per capita or \$5,000, whichever is greater.⁹

The time indicator in the Doing Business project is used in this article to examine the efficiency of the 2017 reforms in the Iranian judicial system. In the following part, for analyzing the efficiency of this policy, Iran's performance in the time indicator before the reforms and the years after them is examined.

⁸ < <https://archive.doingbusiness.org/en/methodology/enforcing-contracts> > [accessed 26 April 2022].

⁹ < <https://archive.doingbusiness.org/en/methodology/enforcing-contracts> > [accessed 25 April 2022].

2.1. Iran's performance in comparison to best and worst performances

For analyzing the efficiency of the reforms in 2017 in Iran, the performance of this country is analyzed based on the time indicator of the Doing Business project. According to the data of this project, dispute resolution from the moment the plaintiff filed a lawsuit in court until the time of payment in 2016 was recorded in Iran at 505 working days. (World Bank Group 2016: 208) As stated by Doing Business reports, 505 days in the post-reform years, in 2018 (World Bank Group 2018: 167) and 2019 (World Bank Group 2019: 178), remained unchanged. As mentioned, in Iran, before adopting the regulations to reduce litigation delay, dispute resolution took 505 days from the filing stage to enforcement (World Bank Group 2016: 208). In 2016, according to the report, the best performance with 150 days was for Singapore (World Bank Group 2016: 208), while the worst performance with 1715 days for Guinea Bissau and Suriname (World Bank Group 2016: 208). Although, in 2017, regulations were adopted in Iran, one year after adopting these regulations, in 2018, the result in time indicator for Iran remained the same (505 days) (World Bank Group 2018: 167). In 2018, Singapore spent 164 days resolving the dispute with the best performance (World Bank Group 2018: 191). The worst performance in 2018 was recorded for Guinea Bissau, with 1785 days (World Bank Group 2018: 164). Two years after adopting regulations in Iran, in 2019, the data for the time indicator was still the same, i.e. 505 days (World Bank Group 219: 178). That year, Singapore, with the best performance, also took 164 days resolving the dispute (World Bank Group 219: 202). The worst performance in 2019 was again recorded for Guinea Bissau, with 1785 days (World Bank Group 219: 175).

Apart from Pareto efficiency, one of the main concepts of the law and economics scholarship, Kaldor-Hicks efficiency is the leading theory of my analysis in this paper to analyze the efficiency of the Iranian judicial system policy. The efficiency of Kaldor-Hicks raises the question whether this collective decision (in this article, a change in legal rules) creates sufficient gains to compensate for the losses from the change hypothetically with leftover gains (Trebilcock 1997: 130-132). In practical terms, the Kaldor-Hicks criterion requires a comparison of the gains and the losses from the policy change. As stated in the Kaldor-Hicks efficiency, the move is deemed efficient as long as the gains outweigh the losses (Parisi 2004: 267). In fact, this criterion entails that status is efficient if it is no longer possible to increase the total welfare of society (Paccas and Visscher 2011: 5). An economic analysis of change in regulations related to dispute resolution speed in Iran is also possible in the same way.

2.2. Comparison of total welfare before and after the reforms in Iran

In this article, to review the efficiency of the 2017 regulations, the total welfare one year before the adoption of these regulations and the total welfare two years after these reforms are reviewed and compared. As mentioned, in 2016 the litigants in Iran would have to spend 505 days for the studying case in the project from its filing to enforcement to be resolved (World Bank Group 2016: 208), while in 2016 the lawsuit under the study of the Doing Business project in Singapore could be settled in the shortest time and in 150 days (World Bank Group 2016: 231). Consequently, instead of 505 days for dispute resolution of the case with specific features considered in the Doing business project, it was possible that the case with the exact same features would have been settled in 150 days in 2016. In other words, the minimum possible time for the case settlement was 150 days, not 505 days. As the minimum possible time for dispute resolution was 150 days, the litigants in Iran spent an additional 355 days and waited 335 days more than the minimum possible time to resolve their dispute in 2016. In other words, the litigants lost 355 days. The number 355 as lost days is obtained from the deduction of 150 days, which is the best performance in 2016, from 505 days, Iran's performance in 2016. In the same way that losses were calculated in 2016, this year's gains can also be examined. Although in Iran, in 2016, a dispute was resolved in 505 days, the maximum time in 2016 was 1715 days. In other words, the same case was settled in 1715 days instead of 505 days, 1715 days drawn from the worst performance in time indicator in 2016. In this situation, the Iranian judicial system resolved the same dispute in 505 days. Hence the litigants saved 1210 days and made gains that year. As a result, in 2016, the total welfare gained for litigants in Iran was 855 days, obtained by deducting gains (1210 days) and losses (355 days).

After calculating the total welfare of the Iranian judicial system in 2016 in time indicator, this paper examines the total welfare of the years after enacting those regulations to reduce litigation delay. After these assessments, according to the Kaldor-Hicks criterion, it would be possible to compare the final welfare in each year to consider the conditions in which it is no longer possible to increase total welfare as efficient (Paccès and Visscher 2011: 5). There is no consensus regarding which measure for social welfare is the best. But most of the time, it is measured with money (Paccès and Visscher 2011: 6). But this does not mean that only financial interests can be included in the analysis. Therefore, it can be the final saving days that are not necessary to spend on dispute resolution (Paccès and Visscher 2011: 5-7).

In 2018 (World Bank Group 2018: 167) and in 2019 (World Bank Group 2019: 178), the litigants had to spend 505 days in the Iranian court for dispute

resolution, while the minimum possible time to settle a similar case in 2018 (World Bank Group 2018: 191) and 2019 (World Bank Group 2019: 202) was 164 days. Consequently, instead of 505 days for dispute resolution of the case with specific features considered in the Doing business project, it was possible that the case with the exact same features would have been settled in 164 days in 2018 and 2019. In other words, the minimum possible time for the case settlement was 164 days, not 505 days. As the minimum possible time for dispute resolution was 164 days, the litigants in Iran spent an additional 341 days and waited 341 days more than the minimum possible time to resolve their dispute in 2018 and 2019. In other words, the litigants lost 341 days. The number 341 results from subtracting 164 days (the best performance in 2018 and 2019) from 505 days (Iran's performance in 2018 and 2019). Although in Iran in 2018 and 2019, a dispute was resolved in 505 days, according to Doing Business reports, the maximum time for dispute resolution in those years was 1785 days which was for Guinea Bissau (World Bank Group 2018: 164 and World Bank Group 2019: 175). In other words, the same case was settled in 1785 days instead of 505 days, 1785 days drawn from the worst performance in time indicator in 2018 and 2019. In this situation, the Iranian judicial system resolved the same dispute in 505 days. Hence the litigants saved 1280 days and made gains in those years. As a result, in 2018 and 2019, the total welfare for litigants in Iran was 939 days, obtained by deducting gains (1280 days) and losses (341 days).

From the analysis of these data, it can be concluded that the Iranian judicial system was not efficient in terms of dispute resolution in 2016 from Kaldor-Hicks's point of view because it changed to a situation with more total welfare in 2018. From Kaldor-Hicks's point of view, a situation is efficient in which it has not been possible to increase the total welfare any longer (Kaldor 1939: 549-552). The total number of days that the litigants saved in Iran for dispute resolution in 2016 were 855; in 2018, this number reached 939. Therefore, it shows that it was possible to increase the total welfare in 2016. Hence, the situation in 2016, compared to 2018, could have been more efficient. While, in 2018, after adopting new regulations, Iran was trying to reduce litigation delay by digitizing the judicial system, the total number of saved days reached 939 days, and the following year (2019) remained unchanged. It means that it was not possible to increase the total welfare in these two years. Therefore, these two years (2018 and 2019) were an efficient situation, and consequently, the regulatory reforms should be considered an efficient move.

According to Kaldor-Hicks's efficiency and based on World Bank data, the new policy in 2017 in order to reduce litigation delay by digitizing the judicial system was an efficient move. In the following section, I also use national data

to show that the system performed efficiently in dispute resolution in the first years after the reforms of the Iranian Judicial system.

3. The efficiency of 2017 Iran's policy based on national data

In 2013, Iranian Parliament approved the "Continuous Improvement of the Doing Business Environment" Act. Under Article 4, the chambers of Commerce, Industries, Mines, and Agriculture in Iran were required to compile and measure the national indicators of the doing business environment in Iran and announce them annually and quarterly in order to inform policymakers about the condition of the doing business environment. Doing business refers to any type of repetitive and legitimate economic activity, such as the production, buying, and selling of goods and services to obtain economic benefits, and the doing business environment is a set of factors that are effective in the administration or performance of production aspects that are beyond the control of their managers (Amini and Norouzi 2017: 75).

Quarterly reports of Iranian Parliament regarding doing business are presented with the approach of combining survey data with statistical data based on Schein's general theory. In these reports, the survey data obtained from the perception measurement of the state of the country's business environment components from almost 3000 economic activists of the three chambers sub-category, and using the method of Computer Assisted Web Interviewing (CAWI) and also Computer Assisted Telephone Interviewing (CATI) have been conducted. And the statistical data have been prepared from the official statistical sources of the country (Iranian Parliament Research Center).¹⁰

As the speed of resolving lawsuits has always been considered one of the primary indicators of the efficiency of the judicial system, especially in the direction of economic growth and ease of doing business, one of the indicators of the doing business environment designed by the chambers of Commerce, Industries, Mines, and Agriculture is the "Weakness of the Courts in Handling Lawsuits Efficiently and Without Litigation Delay". This index expresses the opinion of Iran's economic activists about the efficiency of the process of issuing judicial decisions and the speed of resolving disputes in Iran's courts (Amini and Norouzi 2017: 77).

The evaluation of this component in the period from 2016 to 2019 is presented in Table 1. In this evaluation, the number 10 indicates the worst situation, and the number 1 indicates the best condition.

¹⁰ Iranian Parliament Research Center, Iran's National Doing Business Environment Monitoring Plan < <https://chambertrust.ir/html> > [accessed 11 October 2022].

Table 1. Weakness of the Courts in Handling Lawsuits Without Litigation Delay¹¹

2016				2017			
Winter	Spring	Summer	Fall	Winter	Spring	Summer	Fall
7/11	7/21	6/89	7/23	6/75	6/90	7/50	6/90
2018				2019			
Winter	Spring	Summer	Fall	Winter	Spring	Summer	Fall
6/38	6/22	6/49	6/50	6/34	6/85	6/67	6/52

These data show that the performance of Iran's courts during these four years (2016, 2017, 2018 and 2019) in terms of resolving disputes on time and without delay is lower than the average (five). The general score of less than average demonstrates that, in general, and during these years, the performance of the Iranian judicial system was far from the most efficient situation. However, these results also show that this index's status has improved after 2017 compared to 2016. This improvement in handling lawsuits in Iranian courts is also in terms of time after the reforms in 2017, with the aim of digitizing Iran's judicial system.

Based on the national data of the research, in 2018 and 2019, compared to the year when the reforms in Iran were introduced (2017) and also the year before the reforms (2016), this index is closer to the average, which means that the courts handled lawsuits more efficiently and with less litigation delay in comparison with the years 2017 and 2016 (Baqeri and Barzegar 2021: 4).

This improvement in 2018 and 2019 is consistent with the result of the international data analysis of this research. Based on Word Bank data, the reforms in 2017, with the nature of digitalizing the Iranian judicial system, have been considered an efficient move to reduce litigation delay as the two years after the reforms proved that the Iranian judicial system found itself in a more efficient situation. According to Iranian Parliament reports as the national data in this paper, economic activists also considered dispute resolution in 2018 and 2019 more efficient than dispute resolution in 2017 and 2016 because the status of this index approached the best score (one) (Nosrat Abadi 2020: 130).

Although the reforms with the nature of digitalizing the judicial system based on national and international data have been considered an efficient move to reduce litigation delay, in the following section, from the economic analysis perspective, I argue that this kind of solution overcomes litigation delay temporarily. In the following section, I also show the ways to overcome litigation delay with long-term results.

¹¹ Iranian Parliament Research Center, Iran's National Doing Business Environment Monitoring Plan, < <https://chambertrust.ir/.html> > [accessed 11 October 2022].

4. Ways to overcome litigation delay with Long-term results

Litigation delay, as one of the concerns in the discussion of law reform in almost every legal system worldwide, has two main reasons from the economic analysis perspective. The first reason is that the litigants may be incentivized to delay the proceedings and prefer to postpone the dispute resolution as much as possible. This reason will be explained in the upcoming part of the paper. Secondly, the delay may be due to the number of filings in the judicial system (Miller 1995: 111). For this problem, which is common in almost every legal system, there are solutions, as well. For instance, as mentioned in previous sections of this paper, Iran preferred to digitize the legal system in 2017 to help with dispute settlement. Despite the efforts of legal systems to reduce court congestion, some remedies are effective but may only temporarily reduce delays in courts. The solutions with temporary effects include increasing the number of judges, building more courts, and digitizing the judicial system (Miller 1995: 110).

These solutions have short-term effects as dispute resolution speeds up following these reforms, more cases will be settled, and plaintiffs will get their claims sooner. Therefore, as lawsuits conclude sooner and people do not need to wait long to resolve their disputes, they will be encouraged to file more lawsuits and even cases they had preferred not to file before due to the court delays (Eftekhar Jahromi 2018: 55-57). In this situation, although dispute resolution speeds up and litigation delays become reduced immediately after applying some kinds of solutions, more cases will be filed and cause court congestion again. The massive number of lawsuits that enter the judiciary will destroy the effect of the initial reforms to reduce litigation delays (Miller 1995: 110). Finally, we conclude that Iran's reforms to reduce delays in the courts were an efficient move; however, they bring temporary effects and are not of lasting nature. Therefore, I propose two solutions in the following part to achieve more permanent results.

4.1. Changing prejudgment interest rates

Prejudgment interest, which affects both incentives of the dispute parties in delaying the dispute resolution and the volume of cases, is defined as an interest that a court considers compensating a plaintiff who receives monetary damages prior to trial (Palmer 2002: 705). By determining prejudgment interest by law, the defendants find that they are obliged to pay the interest in the form of damages from the date of filing the lawsuit. Thus, they are unwilling to use methods that slow down the proceedings as they must pay more interest.

Examples of those methods that increase the litigation delay are changing the address, not attending the hearing, and not giving the correct needed information about the dispute (Abhari, and Talaie 2016: 20-25). In this case, we face a reduction in proceedings delays due to a decrease in the defendant's incentives to use methods that slow down the proceedings. Although determining this interest makes the defendant not try to delay the dispute resolution; on the other hand, the prejudgment interest encourages people to file more lawsuits as they can get the prejudgment interest in addition to their claim. Consequently, cases will increase and litigation delays are likely to emerge again (Eftekhar Jahromi 2018: 56-60). Thus, an unbalanced exchange occurs between reducing delays and increasing the number of cases.

For achieving a favorable balance, the prejudgment interest should be considered equal to or lower than the prevailing market profit rate. If the prejudgment interest is lower than the market profit rate, the effect is almost the same as omitting the prejudgment interest benefit situation in the judiciary. For example, if the Prejudgment Interest rate is 5% and the profit rate is 7%, the defendants still have the incentive to delay the proceedings, but their motivation is undoubtedly lower than when no prejudgment interest is determined. However, suppose the prejudgment interest is higher than the profit rate. In that case, prejudgment interest amounts to 10%, while the profit rate is 7%. Then, the defendant tends to move the case quickly in order not to pay more prejudgment interest, and the plaintiff prefers the case to be delayed to get more money (Eftekhar Jahromi 2018: 56-62). In addition, another problem with higher prejudgment interest rates than profit rates is the incentive that these high-interest rates create and encourage people to file more cases in courts to earn more money due to the higher prejudgment interest. To prevent the effects mentioned above (the motivation of the plaintiffs to delay the proceedings and increase the volume of cases), it seems that the amount of judgment interest should be equal to or less than the market profit rate (Barondez 2004: 8-9).

In conclusion, in addition to digitizing the judicial system in Iran, it is suggested that a method be used that consistently reduces court delays.

4.2. Rules facilitating peaceful settlement of disputes

Another way to constantly reduce litigation delays is through rules and regulations that facilitate peaceful settlement of disputes (Priest and Klein 1984: 54-55). One of the most fundamental issues in the economic analysis of proceedings is to consider that conciliation in litigation is not accidental, as litigation is mainly due to ambiguity and conciseness in rights and duties in

a legal system. Where the governing law is sufficiently clear and resolves the legal dispute predictably and explicitly, it is unlikely that a case will be referred to court. Therefore, amending the rules and making them understandable helps reduce court disputes (Priest and Klein 1984: 1-2). In addition, the legal system should always encourage people to resolve disputes peacefully to reduce the volume of cases in court. In general, three main methods have been proposed to encourage people to take advantage of a peaceful settlement, including Alternative Dispute Resolution (ADR), Offer of Judgment Rule, and Settlement Escrow (Razi and Zahedi 2018: 13-17).

Alternative dispute resolution methods refer to all methods in which disputes are resolved out of court. The most important alternative methods are Arbitration, Mediation, Conciliation, Negotiation, and Neutral Evaluation (Darvishi 2005: 37). Using the above methods in Iran often leads to a faster dispute resolution than by court proceedings, as the congestion of cases is not observed in alternative dispute resolution methods. Moreover, Alternative Dispute Resolution has no specific formalities that slow down the dispute resolution process in Iran. Also, using experts in these methods, often without appeal, helps speed up dispute resolution (Farahvashi 2019: 12-15).

According to the Offer of Judgment Rule, if the compromise offer is presented in the form of an Offer of Judgment during the litigation and this offer is rejected by the addressee, if the final decision of the court has fewer benefits for the addressee than the offer, he/she is obliged to pay the costs incurred after the offer made by the proposer (Yoon, and Baker 2006: 155). In some respects, a method similar to the Offer of judgment rule is Settlement Escrow (Gertner and Miller 1995: 155). This offer is based on the understanding that the parties' attorneys often refuse to offer a reasonable compromise before litigation. If they do so, they may feel they are sending a sign of weakness to the other side. This fear and concern about sending signs of compromise in the case may cause the parties to start an unnecessary lawsuit. On the other hand, if they made their conciliation proposals without worrying about losing the opportunity to compromise during the trial, it was possible to avoid unnecessary lawsuits (Gertner and Miller 1995: 89).

Settlement Escrow allows the parties to confidently notify each other of their reasonable and conventional compromise proposals before filing a lawsuit. They do this by presenting their offer to settle the case with third party, often a judicial employee. The third-party must review the offers but refrain from disclosing the offered amount. Disclosure of this information to any authority, even the judge hearing the case, is strictly prohibited. The third-party must keep the compromise offer until the other party's proposal is received. If the responses sent by both parties reach third party, the latter discloses the offer,

ending the case with a compromise at the midpoint of both proposals. Before this time, both parties can pursue their case in court so that there is no compromise offer at all (Gertner and Miller 1995: 93).

Conclusion

Litigation delay is one of the principal concerns of every judicial system, including the Iranian judicial system. Scholars assume that besides other solutions, digitizing the Iranian judicial system is one of the main factors in reducing court delays. In this regard, in 2017, the Iranian legislature enacted regulations related to digitizing the judicial system to speed up a dispute resolution. In relation to this assumption that the digitized judicial system has a positive effect on reducing litigation delay, I argued that although the new policy in the Iranian judicial system is an efficient move, these kinds of reforms increase the speed of dispute resolution only in the short term and have the opposite effect in the long run. Based on my economic analysis of world bank data that featured as international data for the purpose of the study, these reforms have led to the total welfare of the judicial system, which is considered an efficient move. In line with the world bank data, examining the national data from the Iranian Parliament's quarterly reports demonstrated the judicial system's efficient performance in reducing the litigation delay after 2017, that is in 2018 and 2019.

However, according to the rational choice theory, individuals with the ease of filing lawsuits and reducing court delays are more and more encouraged to file lawsuits. In this case, the number of lawsuits increases, and entering more cases into the judicial system and the congestion will reduce the speed of dispute resolution again. In this way, I suggest two main ways to achieve long-term goals that reduce delays in the judicial system sustainably: (1) determining equal or lower prejudgment interest than the market profit rate and (2) enacting rules facilitating the peaceful settlement of disputes.

In this paper, I used the results of the Doing Business report to examine how many days it takes for a dispute to be resolved in Iranian courts. Then, based on the available data, I analyzed the performance of Iranian courts one year before the new regulations were implemented and two years afterwards. According to the economic analysis of the data and the Kaldor-Hicks criterion, I argued that the new regulations led to more total welfare in the years following the regulations implementation (2018 and 2019) than in one year before (2016). The welfare in this analysis is the number of days the litigants do not have to wait for their dispute result. I analyzed that the total welfare in 2016 was 855 days, but in 2018 and 2019, it was 939 days each. In other words, in

2016, the dispute parties in Iran were 855 days ahead of the maximum possible time to process a case; however, in 2018 and 2019, the litigants were in a better situation and were 939 days ahead of the maximum possible time for processing the same case. I, therefore, argued that the amended regulations put the Iranian judicial system in an efficient position compared to the previous situation in terms of the speed of proceedings.

Although I argued that Iran's judicial system has improved over the years following the new regulations, in Section 5 of this article, I analyzed using legal and economic methodology that this efficiency is not sustainable. I argued that although the nature of these new regulations, such as "Use of Computer or Telecommunication Systems" and "Establishment of Electronic Judicial Services Offices", makes the plaintiffs' litigation settle sooner, more people are encouraged to file more lawsuits. In this case, the massive number of lawsuits that enter the judiciary will destroy the effect of the initial reforms.

According to Law & Economics approach, I scrutinized that judicial systems need two main factors to achieve a sustainable and efficient situation: "Prejudgment Interest" and "Dispute Resolution Facilitation Rules". I defined Prejudgment Interest as interest that a court considers compensating the plaintiff who receives monetary damages before trial and also examined the effects of determining it in the judicial system. I analyzed that by determining the Prejudgment Interest, as the defendants find that they must pay the interest in the form of damages beginning with the date of filing the lawsuit, they are not motivated to use methods that slow down the proceedings. I argued that in this case dispute resolution speeds up, but by continuing this process, the judicial system faces the threat of an increase in delays in dispute resolution due to an increasing number of similar cases filed in courts. Thus, by determining Prejudgment Interest the value of cases increases for plaintiffs, so the number of cases filed grows, leading to court congestion again. To balance this situation, emphasizing rational choice theory, I suggested that judicial systems can discourage many people from filing court cases by determining the amount of Prejudgment Interest being equal to or less than the market profit ratio.

Moreover, in this article, I scrutinized another solution with a prolonged effect: adopting rules that facilitate peaceful dispute settlement. I argued that to reduce the number of cases and speed up the proceedings, a legal system should always encourage people to resolve disputes peacefully. In this regard, I proposed three main methods to encourage parties to a peaceful settlement which are "Alternative Dispute Resolution (ADR)", "Offer of Judgment Rule", and "Settlement Escrow". I also explained the essential alternative methods: Arbitration, Mediation, Conciliation, Negotiation, and Neutral Evaluation.

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