
Public Hearings Principle in The Palestinian Civil Procedure Law and Its Relationship to Public Order Concept in Light of The Covid-19 Pandemic

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Abstract

The importance of the public hearing's principle or public of trial sessions clearly appears through the guarantee it provides to litigants during the hearing of the case before the court. This principle is affirmed in the Palestinian Civil and Commercial Procedures Law No. 2 of 2001 as well as in the Palestinian Basic Law of 2003. Public hearings are one of the fundamental guarantees in the litigation process because they create a kind of popular monitoring of the work of the judiciary, and they also create a sense of reassurance between people and litigants about the fairness and impartiality of the judges. This is what is stipulated by the laws of most countries, but it should be noted in this regard that each rule has an exception, so the general principle is public of trial sessions, but the Palestinian legislator excluded some cases and gave the court freedom to make the session secret in certain cases. These cases relate to maintaining the confidentiality and sanctity of the family as well as preserving public order and morals in society. In addition, recently, hearings have become restricted to the parties to the case and their lawyers due to the (Covid-19) pandemic under the pretext of social distancing, prevention and public safety measures.

Keywords: Public Hearings, Palestinian Civil Procedure Law, Public Order, Covid-19.

CONTRIBUTION/ORIGINALITY:

This study contributes to the literature related to one of the most important guarantees of litigation, which is public hearings and the relationship of this matter to the concept of public order. Moreover, this is one of very few studies that talked about this topic in the civil side of the law (Civil Procedure law). Most of the studies dealt with this topic in criminal law. This study provides important results through scientific and practical suggestions for the courts in the State of Palestine, in order to ensure that this concept is applied during the courts sessions.

1. INTRODUCTION

One of the fundamental rules in the judicial system is that the deliberations conducted between the court panel "jury" to decide in the lawsuit must be confidential, to give opportunity among the judges to think, consult, and review documents of the lawsuit to prepare the judgment that will be issued [36]. Article (167) of Palestinian Civil Procedure Law No. 2 of 2001 affirmed this "The deliberation in respect of a judgment shall be conducted in camera between the judges who heard the closing pleadings, otherwise the judgment shall be null and void". While the trial sessions and the pronouncement of the judgment must be public, otherwise, the judgment was null. The general rule, and the basic principle of common law, is that open justice requires public hearings [30].

The principle of public trial sessions is one of the general principles governing the work of all judicial courts. This principle has gotten great importance in constitutional laws in most countries of the world in addition to international covenants and treaties related to human rights [29]. (Look at Article 6 of the European Convention on Human Rights states) "... Everyone is entitled to a fair and public hearing ..." This principle is not limited to specific cases such as criminal cases or civil suits [18]. In fact, it applies to all cases, all stages of Litigation procedures, and in front of all types of courts [34]. Therefore, this principle stipulated in the Palestinian Civil and Commercial Procedures Law No. 2 of 2001, clearly and explicitly, which is the law that regulates the rules. And the procedures that must be followed before the civil courts in

Palestine, in addition, this principle was affirmed by the Palestinian Basic Law of 2003. This study will clarify the concept, effects, and position of Palestinian law from this principle.

From this point the main questions in this study: What is meant by public hearings or public of trial sessions? What are the cases in which the trial sessions must be conducted in camera? What is the impact of not respecting this principle? What is the position of the Palestinian judiciary towards implementing this principle? And how has the (Covid-19) pandemic affected this principle?

2. METHODOLOGY

This research is based on the doctrinal legal research methodology. Two types of data collection methods were used primary and secondary data. The data are collected through the library-based approach. Specifically, primary data are collected from Laws. In addition, the secondary data are sourced from articles, legal documents, books, and online databases. Primary and secondary data are critically and analytically examined and interpreted through the content analysis approach to the collected data.

3. FINDINGS AND DISCUSSION

3.1 Definition of public hearings principle

Public hearings mean is its openness, which involves free admittance to the session at which the hearing is held for all the people, the presence of the press, and the provision of minutes hearing for parties [23]. Thus, the exclusion of openness is an exception and not a rule [32]. In other meaning opening the doors of the courts for the people and giving them the opportunity to attend the trial sessions, listening to the procedures of litigation, and knowing everything that is going on in the courtroom during the hearing of cases [17].

This comes either by giving everyone without discrimination the opportunity to attend the trial or allow the publication of everything that is going on in the session with known and visible publishing ways [19]. Also, is not prejudice to this principle the court's reliance on a particular formula for determining the entry of persons into the courtroom. for example, organizing their entrance by tickets, as long as tickets are not distributed among a special category of people, and given to everyone who requests it [10]. Two key values to consider during public hearings are fairness and respect [5].

In addition, is not violate the principle of public trial sessions when the president of the court uses his right to get out every person from courtroom who's do any behaviour leads to disturb the session's order or order the doors to be closed without expelling the attendees to prevent the confusion from crowding the crowd inside the session "The president of the panel of judges may order any person who disrupts the proceedings to be evicted from the courtroom and, if he resists, may sentence him to imprisonment for 24 hours or impose on him a fine of not more than fifty Jordanian dinars or their equivalent in legal tender. The punishment may be lifted before the end of the session". (Article (117) of the Palestinian Civil Procedure Law). The public hearings must include all trial procedures, investigations, pleadings, and the issuance of judgments, whether they are final judgments in the subject matter of the case or the rulings prior to the adjudication in the case. All of the sessions must be conducted in public, include all trial sessions if several sessions continue.

3.2 The Significance of the Principle of Public Hearings

The principle of public hearings is based on a set of important justifications, some related to the private interest of individuals, and another related to the general interest of society. On the private interest side, public of trial sessions are often categorized as one of the principles relevant to defence rights. Publicity relates to the interest of the defendant; thus, he can rely on it that his case is under the supervision and monitoring of the public [21].

While in terms of the public interest, public hearings are considered one of the important and fundamental guarantees in the litigation process because they create a kind of form of public control over the work of the judiciary [31]. Also creates a sense of reassurance among the people and the litigants about the justice and impartiality of the judges. All of this leads to more examination, accuracy, and patience by the judges when looking at the cases, which improves the proper performance of justice [3].

This gives the people a sense of fairness in the rulings of the judges and confirms their impartiality [14]. Public hearings are given respect for the Procedures of the judiciary. Publicity also achieves commitment and implementation, which is one of the goals that provisions seek to achieve [28].

3.3 Cases of Conducting the Trial Are Confidential "In Camera"

Article 105 of the Palestinian Basic Law 2003 was stipulated "Court hearings shall be public, unless a court decides to make them in-camera due to considerations related to public order or public morals. In all cases, the sentence shall be pronounced in a public hearing". Article 115 of the Palestinian Civil Procedure Law also stipulates "The trial sessions shall be public. However, the court may, either *sua sponte* or at the request of one of the parties, conduct them in camera for considerations of public policy, morality or sanctity of the family".

3.3.1 Conducting the trial in in-camera, for considerations of public order, morality, or sanctity of the family

According to Article 115 of the Palestinian Civil Procedure Law, the court may, on its own or at the request of one of the parties, make the trial sessions in camera, if the suit related of considerations public order as well as morality or sanctity of the family. All of these cases are directly or indirectly related to the concept of public order. Any lawsuit related to the secrets of society, family, or public decency, must trial sessions be confidential, and only parties can attend the trials. All of this aims to protecting the family bond and community unity and avoid rumours [41].

The Islamic judiciary adopted the principle of public hearings, this principle is a matter required by justice as required by public benefit as each party takes his freedom to say what it wants within the circle of truth, and the judge will be more careful because the people will monitor his actions if he impartiality or not. While in the secret trial may not be treated the two parties alike, in addition to the general benefit of this principle, as it increases people's confidence and trust in the courts when it leaves them free to attend the trials [4].

According to the aforementioned Article 115, if court hearings held in camera the judgment rendered in these cases will be completely null. (Unless the court decides that they should be held in camera in order to safeguard public order and morals). This nullity is related to the public order and may not be corrected or ignore. On the other side, if the sessions are conducted in public while it must have been in-camera to safeguard public order and morals, or the sanctity of the family, the judgment rendered on this lawsuit is considered absolutely null, this nullity also related to the concept of public order. An example of this case is the suit of Proof of filiation [25].

In all cases, judgment shall be pronounced at a public hearing, regardless of the trial sessions were conducted in public or in-camera, according to the text of Article 171(The judge shall pronounce judgment, either by reading out only the ruling or by reading out the ruling and the reasons. The pronouncement of judgment shall be public otherwise a verdict shall be declared null and void.

3.3.2 The lawsuit against Judges and Members of the Public Prosecution

The second exception to the principle of public hearings is filing a lawsuit against judges and members of the department of Public Prosecutions for compensation, (disciplinary proceedings against judges) which shall be lodged and heard in accordance with the procedures specified in the Civil Procedure law. Article (153) (Judges and public prosecutors may be proceeded against in the following two cases: A. If deceit, fraud, or a serious and irremediable professional fault is committed by the judge or public prosecutor in the performance of his function. B. In other cases, where the law holds the judge liable to pay damages).

The law imposes that all court hearings in a suit against judges and members of the department of Public Prosecutions, including the pronouncement of the verdict, must be in a closed session, (Article (156) "The president of the court of appeal shall order that a closed session be scheduled to hear the action instituted against a judge or public prosecutor and the date of the session shall be notified to the parties). due to considerations related to the prestige of the judiciary and the standing of judges and prosecutors in society. This is the only case in which all trials session and pronounce of judgment conducted in closed sessions.

Public hearings do not require that the session be held in one of the halls designated for that. It is enough to taking place in the office, provided that the door remains open, as long as others can monitor what is going on inside. However, if the doors are closed, the session becomes confidential, so all actions taken in this lawsuit, and what is based on it, including the court's ruling, are invalid, unless the law provides otherwise [3].

It is clear from looking at the cases in which the Palestinian legislator makes an exception to the principle of public hearings that the purpose of the confidentiality of civil trials is to prevent violation of public order and morality. The exception falls within considerations related to public morals, public modesty, and the protection of family privacy and the fundamental interests of society [16].

3.4 The impact of the COVID-19 pandemic on the principle of public hearings

It has already been said above that Article 115 of the Palestinian Civil Procedure Law stipulates (The trial sessions shall be public. However, the court may, either *sua sponte* or at the request of one of the parties, conduct them in camera for considerations of public policy, morality or sanctity of the family).

This is what the Palestinian judiciary has been following for many years, until now. However, the emergence of (COVID-19) made the Supreme Council of the Palestinian Judiciary issue a decision on March 22, 2020, regarding the organization of work in regular courts during the exceptional case by preventing anyone from entering the courts except for those who have a direct correlation in the lawsuit [15].

In other words, attendance at the trial session is restricted to the parties of the case, their attorneys, the judge and the clerk of the hearing. In addition, there are many judges who even refused the parties of a lawsuit to enter the judge's chamber or courtroom if they had lawyers. Therefore, that attendance was limited to the attorney of the plaintiff, the defendant, the judge and the clerk of the hearing. Not to mention the closing of the judge's chamber door as well [8].

How can it be said that justice has been achieved in this situation and litigants themselves does not know what is going on inside the courtroom, all of this under the pretext of social distancing to combating the spread of coronavirus? thus, this matter is a total breach of public hearings principle [20]. In addition, no justification can be accepted based on the saying that this matter is related to public order and public health to preserve people's lives [27]. There are many other simple solutions that could have been adopted in solving this problem while continuing to preserve people's health and lives and at the same time not violating a legal principle established for decades [22]. Especially there are many people wandering around at main court building either for reviewing or completing other transactions, is it conceivable that social distancing measures should be taken only inside the judge's room in which the pleadings take place, while there are dozens of people roaming at the main court building. Therefore, the researcher believes that the Palestinian Supreme Judicial Council (Gaza), by issuing a decision restricting attendance of trial hearings for lawyers and parties, is completely contrary justice concept and public order through breach public hearing principle [13].

The researcher proposes a simple and quick solution for this issue by putting a display screen at the entrance to the court building to transmit a live broadcast of what is happening inside the courtroom so that people can see and know what is going on inside the trial room. Also, work to create an official page on social media for each court through which it makes a live broadcast of the trial sessions, especially since the number of courts in the Gaza Strip does not exceed thirteen courts of all types. (Magistrate Courts, First Instance, Appeal, Supreme Court, in addition to the Administrative Court).

All of this is indispensable for allowing the parties of the case to appear face to face at the trial room, and no excuse can be used to prevent them from attending their case even if the lawyer of each party is present because this not only leads to a violation public hearings principle alone [12], but for many principles and rights of litigants such as right Defence, right to confrontation and right of looking to all the case documents [33] [7]. This matter does not prevent everyone from his duty to observe the preventive, safety and health measures established in the regulations and provided by the court.

There is another solution that the researcher proposes and can be applied in the near future if the opportunity arises for that, which is the electronic litigation system, as it is applied in some countries by holding the trial session online exactly like online education [39]. Remote hearings are definition as hearings that are

conducted using communication technology to simultaneously connect participants from two or more locations. This could include communication through telephone or videoconference, or possibly other more futuristic technology such as telepresence [37] [38]. Anyone can attend the session by entering the link specified for the host, while lawyers and parties are allowed to speak in these sessions [6].

However, this matter is somewhat difficult to implement in the current situation in Palestine in general and in the Gaza Strip, especially due to the lack of financial resources and technical materials, particularly the problem of power outages for a long hour. In addition to the Gaza Strip's dependence on second-generation networks for the Internet and communication while the world is moving towards the fifth-generation networks.

All this is due to existing conflict between the Palestinians and the Israelis and the siege imposed on the Gaza Strip for more than 14 years. Furthermore, not allowing entry of any modern technical tools into Gaza Strip. In the end, the judiciary institution must remain the institution most committed to implement the law and not breach any legal principle, even in light of the exceptional circumstances that the world is going through.

3.5 The Effect of not Observing the Principle of Public Hearings

First of all, it must say that the nullity in the Code of Civil Procedure is a penalty stipulated by law because of the existence of a defect in procedural work due to the failure to follow legal procedures properly during submission or implementation of Procedures. This leads to the failure to arrange any legal effects on this wrong procedure [35].

There are two types of nullity in civil procedure law, absolute nullity, and relative nullity and it is important to distinguish between it. Any action contrary to public order is an absolute nullity and not arranging the procedure for any results or effects it as if it was not. On the other hand, if this procedure who's related to public order is properly carried out according to law, the procedure arranges its results and effects. Absolute nullity which related to the concept of public order cannot be undone, ignored, or overlooked because it involves a significant error [11]. This kind of nullity related to societal interest or public interest.

Examples of a public order absolute nullity include failure to give litigants the right to defend themselves or failure to issue the judicial ruling in a public hearing or failure to provide litigants of the principle of litigation on two levels. Where occurs any violation relates to public order has been identified, the judge must rule a nullity on his own initiative without waiting for the litigants to invoked by this nullity. In addition, this nullity can be invoked by the litigants at any stage of the litigation procedures, before any court, even for the first time before the Court of Cassation [1].

The second type of nullity is a relative nullity; relative nullity is where the error concerns the interest of one or both litigants. A relative nullity is not of societal interest or of public interest. Thus, if this nullity occurs, the judge may not invoke by this nullity from his own, and must to the party given by the law a right to invoke by this type of nullity raise this nullity before the court at the exact time, often before starting to discuss merits of the case. otherwise, his right will lose to invoke by this nullity.

Based on the above and although the Palestinian law does not contain a general text expressly stipulating to nullity if failure to observe the principle of public hearings in civil trials. but it can be said, that the nullity of the judgment for violating the principle of public hearings and not respect this rule can be based on the nature of this principle, because of relates to public order. And the concept of public order in the Civil Procedure Code means a set of essential and fundamental legal rules relating to judicial organisation and the proper functioning of justice by preference the interest of justice on the self-interest of the litigants, for example, the foundations of judicial organisation, such as equality before the judiciary, the independence of the judiciary, the principle of two-level litigation, the right of defence, dates of appeal against judgments and the principle of public hearings [24].

All of these rules and principles called peremptory norms (Rules of *jus cogens*) this rule was established to protect the common good or to regulate litigation [26]. Violation thereof leads to the absolute nullity of the procedure, cannot be overlooked or corrected and the parties cannot agree to violate it. Based on this fact, the Palestinian Court of Cassation concluded that a violation of the principle of a public trial is a violation of public order that gives the court the right to overturn the ruling on its own. (Judgement of the Appeal Court Convening in Jerusalem in Case No. 248 / 2008 Civil Action Issued on Nov 25, 2009, Litigation Type: Civil

Case. Also, the judgement of the Cassation Court Convening in Gaza in Case No. 177 / 2002 Civil Action Issued on Oct 21, 2003, Litigation Type: Civil Case). (Birzeit University Institute of Law).

In the end, everyone in society has the right to see justice done [40]. This means that merely violating the principle of public hearings involves a breach of justice. Therefore, failure to observe the principle of public hearings is a definite presumption to existence harm. To achieve the goal of public hearings, the pleadings before the court must be oral. That's meaning the litigants or their agents present orally plead before the court, as well as listen to the evidence. All of this is the application of the wisdom that says the judge who has decided without hearing the other party was unjust even if the decision was a just one [9]. This does not contradict the fact that litigants may submit before the court written notes, especially since these documents do not include new requests or defences that the litigants have not seen before. These documents just for clarification of the parties' position in realistically or clarification of legal basis of claiming and helping to solve the problem of increasing the number of cases because the judge does not have enough time to hear all the pleas and arguments of the litigants [2].

The pleadings and documents must be in the Arabic language because it is the official language of the judiciary if it in another language it must be attached a translation with it in the Arabic language. (Article 156 of the Palestinian Civil Procedure Code). Judicial rulings must be rendered in the Arabic language, otherwise, the judgment is invalid. In line with all of this, the law permits the public to obtain a copy of the ruling, in order to achieve full popular monitoring. (Article 177 of the Palestinian Civil Procedure Code).

4. RESULTS

This study came out with a result that, the principle of public hearings is a general and fundamental principle that governs the work of judicial courts and cannot be ignored or overlooked. It is worth noting that this study has reached the conclusion that failure to observe this principle or not apply it leads to the nullity of the ruling issued in the lawsuit and nullity of all the procedures were taken in the lawsuit. Even in the exceptional circumstances like the COVID-19 pandemic. One of the most important findings of the study is that nullity in the event of a verdict being rendered in a closed session is a complete nullity. This type of nullity is called (absolute nullity) this nullity related to public order. Therefore, if the second instance court (the Court of Appeal) and the Court of Cassation confirmed that the judgment issued by the First Instance Court (the Magistrates Court) was rendered in a closed session, it must decide to cancel the ruling completely and return the suit to the same court that rendered the judgment and hear it by another judge. If the Court of Appeal or Court of Cassation does not do this, it will be considered a clear violation of the law and justice. principle of public hearings is achieved by keeping the courtroom door open to all and is not limited only to the parties to the case, whether, in civil or criminal cases, the aim in both is the same, in addition to allowing anyone to sit inside the room without restriction or condition

5. CONCLUSIONS

In sum, the purpose of the principle of public hearings is to enable society to see justice done. In this sense, the English principle (Justice is not only to be done, but to be seen to be done). However, public hearings are not absolute there is an exception to it. Where the necessity sometimes requires that the sessions, in whole or in part, be conducted in camera for considerations of public order, morality, or sanctity of the family.

Finally, the principle of public hearings is considered to be related to the concept of public order. This opinion was adopted by the Palestinian Court of Cassation, but the Palestinian legislator was unsuccessful in organizing this principle, so it was better for him to decide nullity explicitly by stipulating this in the Civil Procedure Law in the event that the court violates this principle. Also, a clear standard should be established for cases in which the court may hold sessions in secret if the lawsuit is related to public order or the sanctity of the family. Consequently, this matter should not be left open to the court's authority to determine which cases should be conducted in camera and which should not, rather there must be a clear standard that the court must follow. In addition, it is not possible to use the pretext of the Covid-19 pandemic to prevent people from entering the courtroom and knowing to what is happening inside. Therefore, If the Palestinian Judicial Council wants to do so, it must provide another means with which to achieve the application principle of public hearings sessions by enabling public to attend trials, as suggested by the researcher.

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