

THE NATURE OF PROCEDURAL SILENCE IN CIVIL PROCEDURE LAW AND DISTINGUISHING IT FROM SIMILAR SITUATIONS: A COMPARATIVE STUDY

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Abstract

This study examines procedural silence in civil procedure law in terms of its legal nature and its distinction from similar situations, such as implied expression, qualified silence, and the principle of good faith. The research adopts an analytical-comparative approach to legislation, jurisprudence, and doctrinal trends in Iraqi law, with reference to comparative laws. The study concludes that procedural silence is a complex phenomenon, ranging from a purely negative stance of inaction to an implicit will manifested in acceptance or implicit waiver. This complexity necessitates legislative intervention to regulate it and unify judicial standards.

Keywords: silence, procedural, abstention, acceptance, implicit

INTRODUCTION

Praise be to Allah, Lord of the Worlds, and peace and blessings be upon the noblest of creation, Muhammed, who was sent as a mercy to mankind. We present our introduction in the following paragraphs:

First: An introduction to the research topic

Procedural silence is one of the important subjects within the scope of the Code of Civil Procedure due to its direct impact on the progress of the lawsuit and the rights of the parties. Silence, as a negative stance that produces no effect, may in other instances be viewed as a voluntary temporary stance from which a waiver of a procedural right, or an implicit acceptance of a procedure or judicial ruling, can be inferred. From this perspective arises the significance of researching the nature of procedural silence in the Iraqi Code of Civil Procedure and in comparative law. Distinguishing it from other similar situations represents both a scientific and practical necessity to ensure clarity of the procedural positions of the parties and to achieve a balance between the principle of stability of litigation and good faith in the exercise of procedural rights.

SECOND: THE SIGNIFICANCE OF THE RESEARCH TOPIC AND THE REASONS FOR CHOOSING

The importance of studying this subject stems from its direct connection to the principle of confrontation between litigants and the guarantees of the right to defense. The refusal of a party to undertake a specific procedure may lead to consequences that could reach the extent of forfeiting a right or establishing a legal presumption that influences the course of the case, depending on its context and the determination of its nature. This topic was chosen for several reasons, the most prominent of which is the scarcity of specialized studies that have addressed procedural silence in itself, as well as the overlap of its concepts with similar legal situations such as implicit expression or contextual silence, which leads to doctrinal and judicial confusion that requires clarification and treatment.

THIRD: THE RESEARCH PROBLEM AND QUESTIONS

The problem of the research lies in determining whether procedural silence is to be considered a form of expression of will or merely a legal condition that does not involve a disclosure of a position. Confusion between it and other similar situations may cause disruption in understanding the legal positions of the parties. In addition, the research raises several questions, the most important ones are:

1. Is procedural silence merely a negative stance, or is it an implicit willful stance that produces legal effect?
2. To what extent is it connected to the principle of good faith in judicial litigation, and how can its criteria be defined and distinguished from other similar situations?

FOURTH: THE RESEARCH METHODOLOGY

This research adopts the analytical-comparative method by analyzing and comparing the provisions of the Iraqi Code of Civil Procedure No. 82 of 1969 (as amended) with the Egyptian Code of Civil and Commercial Procedure No. 13 of 1968 (as amended) and the French Code of Civil Procedure No. 1123 of 1975 (in force), in addition to the applied method by referencing judicial decisions and rulings.

FIFTH: STRUCTURE OF THE RESEARCH

We divided this research into two main requirements as follows:

First Requirement: The nature of procedural silence in the Code of Civil Procedure: Section One: Procedural silence as acceptance of the procedure or judicial ruling: Section Two: Procedural silence as a waiver of a procedural right

Second Requirement: Distinguishing procedural silence from other similar situations: Section One: Distinguishing procedural silence from implicit expression: Section Two: Distinguishing procedural silence from the principle of good faith: Section Three: Distinguishing procedural silence from contextual silence

First Chapter: The nature of procedural silence and its distinction from other similar situations

A procedural act issued by a litigant is purely voluntary in nature. However, an individual's will does not possess authority in the realm of procedural acts. Within litigation, an individual cannot achieve any procedural objective except through complete submission to the law, which prescribes the means, defines their form, and regulates their effects. (Wali, 1977). If the manifestations of procedural economy, procedural cooperation, and the observance of good faith in undertaking procedural acts are considered characteristics of procedural silence, then it becomes necessary to distinguish it from other situations that may be confused with it. Accordingly, in this section, we will address the nature of procedural silence and distinguish it from similar situations. It will be divided into two subsections: in the first subsection, we will clarify the nature of procedural silence, and in the second subsection, we will discuss the distinction between procedural silence and other similar situations, as follows:

First Requirement: The Nature of Procedural Silence

On the one hand, researching the nature of procedural silence requires removing the obstacles that confront procedural rules, and on the other hand, the realization of harmony between the procedural rule and reality. The nature of procedural silence becomes evident in the difficulty of aligning factual reality with judicial rulings. This complexity in the legislation of the Code of Civil Procedure results in codifying procedural rules in a way that causes disorganization, ambiguity in understanding, and difficulty in application. (Ibrahim, 2021)

Its nature is revealed through the removal or reduction of procedural complexities by achieving compatibility between the procedural text and the reality to which it is applied. (Ibrahim, 2021). Based on the foregoing, in this requirement we will address the nature of procedural silence through the following:

- Section One: Procedural silence as acceptance of the procedure or judicial ruling.
- Section Two: Procedural silence as a waiver of a procedural right.

Section One: Procedural Silence as Acceptance of a Procedure or Judicial Ruling

Will is the foundation of any legal act. However, the law does not recognize this will if it remains hidden in the mind, known only to its possessor. For will to produce its legal effect, it must be expressed in a manner acknowledged by the law. Such expression may be explicit or implicit, since the law does not prescribe a specific form or appearance for expressing will. (Ibrahim, 2021)

To clarify the nature of procedural silence as acceptance of a procedure or a judicial ruling, it is necessary to refer to Iraqi legislation and comparative legislations. By examining the provisions of the Iraqi Code of Civil Procedure, Article (169) explicitly provides for acceptance. (Article, 169 of The Iraqi Civil Procedure Law)

Acceptance of a judgment, whether explicit or implicit, or the explicit waiver of the right to appeal before the court that issued it, or through a notarized document, are all reasons that make the appeal subject to dismissal. This is because such conduct is considered an acceptance of the judgment and a waiver that cannot be revoked. If the appellant's intention is directed toward this outcome, the above-mentioned article stipulates that the waiver of the right to appeal must be expressed in clear terms that do not allow for interpretation. (Mahmood, 1994)

As for Egyptian and French legislation, both regulate the acceptance of judgments by explicitly providing for it. Article (211) of the Egyptian Code of Civil and Commercial Procedure stipulates: *"Appeals against judgments may only be filed by those against whom the judgment was issued, and may not be filed by those who have accepted the judgment or by those in whose favor all claims were decided, unless the law provides otherwise."* Similarly, Articles (409 and 410) of the French Code of Civil Procedure state that the acceptance of a judgment requires submission to all its aspects and entails a waiver of the means of appeal available against it. Acceptance of a judgment may be either explicit or implicit. (Articles 409 and 410 of the French Code of Civil Procedure. Article 409 provides: "The

acceptance of a judgment entails submission to all aspects of the judgment and the waiver of the remedies provided against it." Article 409 of the French Code of Civil Procedure: "Acquiescence to a judgment entails submission to all its provisions and a waiver of the remedies available against it, unless subsequently another party properly files an appeal." Article 410 of the French Code of Civil Procedure: "Acceptance of a judgment may be either express or implied."

As for the jurisprudential opinions regarding the nature of silence as acceptance of a judgment or procedure in procedural law, they may be summarized as follows: A group of scholars believe that the Iraqi Code of Civil Procedure in force does not recognize implicit acceptance of a judgment or the non-explicit waiver of the right to pursue appeal. According to Article (169) of the aforementioned law, merely refraining from filing an appeal, remaining silent about the right to appeal, or requesting its annulment cannot be considered acceptance of the judgment or a waiver of the right to appeal, since such conduct amounts to implicit acceptance or waiver. (Al-Akili, 2022)

According to the Iraqi jurist Hadi Al-Kaabi, implied acceptance does not include final judgments on the merits of the case and its claims. Judicial decisions, on the other hand, have a distinct nature and legal effect and are not considered judicial judgments in the absolute sense; this includes decisions annulling a statement of claim. Article 169 does not concern implied acceptance of a judgment; rather, it addresses the waiver of the exercise of remedies against judgments that may be issued by courts of substantive jurisdiction, allowing the judgment to acquire finality immediately upon issuance due to the parties' waiver of appeal through the two prescribed channels. As for the issue of implied acceptance of a judicial ruling, the legislator did not explicitly address it; however, its essence can be inferred from the acts of a party who refrains from exercising available remedies after losing the case or a part of the claim. Such conduct constitutes a practical indication of the party's implied acceptance of the rendered judgment. The philosophical rationale for appealing judicial decisions extends beyond merely verifying the correctness and fairness of the procedures undertaken by the court; it aims to provide the parties with confidence in the validity and justice of the substantive procedures applied in the case. (Jabr, 2025)

The parties may implicitly accept a judgment by allowing the period for appeal to lapse without exercising their right within the legally prescribed time limit, or by abstaining altogether from pursuing it. In such cases, the litigant may consider that there is no need to challenge the judgment, as the same outcome can be achieved at the first instance. (Khatir, 2020). In Egypt, some jurists argue that "consent to a judgment, whether explicit or implicit, occurs when the party who has accepted it refrains from appealing it by any available means of appeal against the party in whose favor the judgment was issued." (Hindi, 1995). Furthermore, explicit or implicit acceptance of a judgment takes place once the right to appeal it through the designated legal avenue is no longer exercised. (Al-Ansari, 2009). Another group of scholars maintains that "if the appellant abandons his appeal, or it is annulled at his request, such abandonment or annulment constitutes acceptance by the appellant of the judgment rendered against him by the court of first instance. This acceptance of the judgment not only prevents the abandoning, silent, or requesting party from re-appealing the judgment, even if the time period still allows, but also bars him from challenging it through extraordinary remedies, including retrial, if the ordinary means of appeal were not exhausted in relation to it." (Abu Al-Wafa, 1975)

One of the most important effects resulting from the acceptance of a judicial judgment, whether explicit or implicit, is that it produces binding legal consequences. (Abu Al-Wafa, 2015). For instance, if the defendant remains silent about the plea of lack of territorial jurisdiction and proceeds to address the merits of the case, such silence is considered implicit acceptance or an agreement not to contest territorial jurisdiction. (Wali, 1977)

In French, acceptance of a judgment has been defined in several ways. One definition describes it as "approval of the judgment, which necessarily entails the waiver of the means of appeal that could be used against it." (Garsonnet, (1913), and Mohamed, (2020). Another defines it as "approval of the judgment by the party entitled to challenge it, through renunciation of the means of appeal that could be exercised against it, or by abandoning an appeal that has already been filed and the litigation resulting from it." (More et al. 1935). It has also been defined as "the explicit or implicit approval of a judicial decision that may be appealed by one of the available means of appeal, with the result that the decision acquires the authority of *res judicata*." (Mohamed, 2020)

As for the nature of silence according to judicial rulings, the Kirkuk Court of Appeal held in one of its decisions that: "... since no objection was raised against the report of the sole expert at both the trial and appellate stages, where the amount was assessed at one million nine hundred ninety-eight thousand dinars, three hundred fifty-five thousand dinars for each of the respondents, and since no appeal was filed against the decision issued by the trial and appellate courts, both respondents are deemed to have accepted the trial judgment. This is based on the rule that the appellant cannot be harmed by his own appeal, and thus the judgment cannot exceed what the respondents (the appellees) had accepted." (Kirkuk Court of Appeal, 21st of Sep, 2023)

The court, therefore, inferred from the absence of objection at both the trial and appellate stages, as well as from the failure to appeal the decision at all, that the silence of the appellees constituted acceptance of the procedure undertaken by the court and of the judgment issued against them. Similarly, French jurisprudence, in a decision of the French Court of Cassation, held that "allowing the appeal period to lapse is equivalent to accepting the judgment." (Cass.Civ. Ire, 18 jan v, 2000, RDI,2000,226). In the same vein, it also ruled that "the trial judge has discretionary authority in

determining the existence of acceptance or its absence, and such determination is not subject to review by the Court of Cassation if the acts and conduct indicate an intention to accept.” (Cass. Soc.16, feve,1951. Bull.civ. III.no126, Cass. Com, 24 avr ,2023, D.637, Cass. Com, 27.nov,2019,Bull.civ. IV, no308)

We can conclude that the nature of procedural silence manifested by refraining from taking action, submitting a plea, or pursuing an appeal against the judgment, that is, by complete inaction amounts to acceptance of the procedure or the judicial ruling. We also agree with the opinion that distinguishes between judgments and decisions: silence in failing to pursue appeal procedures against judgments constitutes implicit acceptance of the judgment issued, whereas abandonment of appeals against decisions does not constitute implicit acceptance, except in the cases expressly provided for in Article (216) of the Iraqi Code of Civil Procedure, due to their special rule and effect.

Section Two: Procedural Silence as a Waiver of a Procedural Right

A procedural right pertains either to the subject of a claim or to a defense plea. The purpose of a party in submitting a claim is to achieve a benefit, which is the issuance of a ruling by the judge, while the function of defenses is to prevent such a ruling. Accordingly, it has been said that a claim is a positive means, whereas a defense is a negative one. (Abu Al-Wafa, 1977). Since the basis of a voluntary act is that it expresses the will, and because the general principle in legal acts is that their external existence is realized through expression, it follows that a procedural right does not exist without its expression. The procedural right may be invoked, asserted, or relied upon either in writing or orally. (Al-Sharqawi, 1993)

Therefore, the general principle is that a procedural right cannot exist without being expressed. As a rule, a procedural right may be asserted, invoked, or relied upon either in writing or orally. While waiver is a voluntary act, it constitutes a procedural act of will, meaning that the content of the will in this act is essentially procedural and negative in nature. If the waiver pertains to a procedural right of its holder, it must be expressed, either expressly or implicitly. When a party waives, during the continuation of litigation, a procedural act or a document forming part of the pleadings, that act or document is considered null and void. Furthermore, if the concession involves the relinquishment of a procedural right, that right must belong to the party making the waiver, meaning that the claim or defense subject to waiver must not concern matters of public order. (Omar, 2004)

Accordingly, the waiver of a procedural right is exercised by the unilateral will of its holder, whether expressed expressly or implicitly. Some scholars have permitted the waiver of a procedural right in advance, in application of the principle of party autonomy. This principle holds that a private dispute belongs to the parties, who may choose to bring it before the court or refrain from doing so. If the dispute is brought, the parties may abandon it, waive it, or settle it, while the judge’s position remains neutral and uninvolved in the dispute, as a general rule. (Abdullah, 2002)

A party also has the freedom to exercise all procedural rights or to refrain from exercising them. Accordingly, parties may waive the assertion of a defense, provided that the defense does not relate to public order. (Raghib, 1997). Likewise, a plaintiff may waive the litigation with respect to his own right in the dispute. (Omer, 2004). However, if the claim concerns the rights of a third party, the rights of God, or public interest linked to public order, the waiver does not extend to this portion. The other party’s consent is not required for the waiver, as long as it does not cause harm to them. (Raghib, 1997). Hence, it follows that a procedural right belongs to its owner, and it may therefore be waived if it does not pertain to public order. Silence in asserting the right within the prescribed period constitutes a waiver, resulting in the loss of the right even if the party later attempts to assert it. The Iraqi legislator referred to implicit waiver in Article (177/2) of the Code of Civil Procedure, stating that if the judgment debtor appeals a default judgment by a method other than objection, such as by appeal or cassation, this constitutes a waiver of the right of objection and its forfeiture. See: Article 177(2) of the Iraqi Civil Procedure Code No. 83 of 1969, as amended. Meanwhile, Article (89) of the same Code restricts waiver of a procedural act to explicit expression. (Article 89 of the Iraqi Code of Civil Procedure "If a party waives, during the course of the proceedings, a procedural act or a document forming part of the case, that act or document shall be considered as if it never existed."

The aforementioned article expresses waiver legally as a form of forfeiture, such as when a plaintiff waives a provisional attachment or abandons personal evidence that the court had provisionally relied upon. In such cases, the procedure or document is considered as if it had never existed (Mahmood,1994). Some defend the position of the Iraqi legislator and consider it correct, arguing that a waiver entails forfeiture and must be explicit, not inferred from surrounding circumstances. (Al-Sabawi & Faisal, 2015). However, this view is debatable because the essential element is the existence of the will, regardless of the method of its expression, whether explicit or implicit. Once the will is manifested, its legal effect should be presumed. Although the requirement of explicit waiver may aim to reduce its negative consequences, in the context of nullity, waiver serves as a means to preserve procedural acts. It does not threaten the procedural or substantive rights of the parties; rather, it safeguards them. Therefore, obstacles to achieving this objective, such as limiting waiver to explicit expression only, should be removed. It is thus recommended that the Iraqi legislator follow the Egyptian and French legislations by allowing waiver of invalid procedures either explicitly or implicitly, for the reasons previously stated. This contrasts with the Iraqi judiciary, where the Federal Cassation Court ruled that:

1. A decision annulling a claim is not a final judgment in the dispute; the plaintiff may abandon the request to annul the statement of claim explicitly or implicitly before the court issues the annulment decision.

2. The defendant's or his agent's attendance at subsequent sessions where annulment was requested, and his agreement in one session with the plaintiff or his agent to postpone the case, is evidence of implicit abandonment of the annulment request.

(Iraqi Court of Cassation Decision No. 3857 / Personal Status / 1971, issued on 23/2/1971, published in the Judicial Bulletin, Issue 1, March 1972, pp. 93 et seq.)

Notably, the above decision indicates that the judiciary has permitted implicit waiver, including the waiver of annulment of the statement of claim. It is observed that the legislator has imposed restrictions on the parties' rights within the scope of formal litigation procedures. Among these restrictions is the requirement for a party to exercise its right within the period prescribed by law, whether as a fixed term, as in the case of appeals which must be filed within a specified timeframe, or immediately, as in the case of raising a defense concerning the nullity of the statement of claim or other documents that must be served before addressing the merits of the case. Failure to comply results in the forfeiture of the right. Accordingly, the effect of a party's silence regarding a formal procedural act, even if invoked after the lapse of the prescribed period, is deemed a waiver of that right, resulting in its extinction. In other words, procedural silence constitutes a waiver by the party in whose favor the act was established, relinquishing the right to that act if not exercised within the prescribed period, and any subsequent attempt to invoke or rely on it after the expiration of the term is ineffective. (Our field visit to the Court of Appeal of Kirkuk, during which we met with Judge Abbas Qasim Mahdi, Vice President of the Kirkuk Court of Appeal and a member of the Second Criminal Panel of Kirkuk, and discussed the nature of procedural silence. Some observations from this discussion were recorded during our aforementioned visit on 2/4/2025, at 10:00 a.m.). This differs from the Egyptian Code of Civil and Commercial Procedure, which recognizes both explicit and implicit waiver in Article (144). (Article 144 of the Civil and Commercial Procedure Code: "If a party, during the continuation of the litigation, expressly or implicitly waives a procedural act or a document forming part of the pleadings, that act or document shall be considered as if it never existed." Acceptance of a judgment and waiver of the right to appeal are two sides of the same coin, as acceptance of a judgment entails waiving the exercise of appeal procedures against the party in whose favor the judgment was issued. This waiver may be either explicit or implicit. (Abu Al-Wafa, 1995)

The French Code of Civil Procedure, meanwhile, seeks to prevent disputes from becoming a permanent burden on the parties. To allow sufficient time for a party to organize its defense, the law requires that the right to file a lawsuit be exercised within specified deadlines; otherwise, the right is forfeited. At the same time, the law permits a party to express its will, either explicitly or implicitly, indicating a waiver of its right, whether the right is substantive or procedural. Accordingly, a waiver may be expressed in clear, unequivocal terms or may be implied. It constitutes a legal act issued by the sole will of the waiving party, without requiring consent from the beneficiary or any role for the party in whose favor the waiver is made. (Ca Douai, 2020), (Khalifa, 2015), (Cass, 2011), (Cornu, 2000), (Cour de cassation, civile, Chambre civile 3, 20 janvier 2015, 13-12.127, Inédit.Cass. Civ. 2. 2 février 2017 no16-13).

It becomes clear from the foregoing that both the Egyptian and French legislations explicitly recognize both explicit and implicit waiver, whereas the Iraqi legislator has not expressly provided for implicit waiver. Instead, Iraqi law recognizes only explicit waiver, with implicit effect applied indirectly, as reflected in Article (177/2) of the Code of Civil Procedure. While the law grants individuals the authority to directly undertake procedural acts to prevent delays or laxity in litigation, it does not allow them to exercise this authority at their discretion. The legislator intervenes to regulate these rights, define their limits, and specify how they are to be exercised. If a party remains silent in exercising their rights, whether due to failure to observe procedural deadlines or failure to follow the prescribed order of procedures, this inaction constitutes a waiver of the right to undertake the act and is one of the main reasons for procedural forfeiture. (Al-Jaff, 2015)

We observe that the nature of procedural silence is determined according to the act it relates to and the context of the case. It constitutes implicit acceptance of a procedural act not related to public order or of a judicial ruling, resulting in the validity of the act undertaken and the judgment acquiring finality. Procedural silence also amounts to an implicit waiver of a legally established procedural right if a party remains silent regarding that right within the prescribed deadlines and then attempts to exercise it after the deadlines have expired without an acceptable excuse. The legal consequence of this is the forfeiture of the right to the act. In other words, absolute procedural silence in failing to exercise a procedural act or right has a dual nature: it constitutes both acceptance of the act taken or judgment issued and a waiver of the right, as they are two sides of the same coin. Silence in refraining from exercising a right within the legal period, followed by attempting to exercise it after the period has lapsed, constitutes implicit waiver of that right and produces the legal effect of forfeiting the procedural right (such as a plea or appeal). Jurisprudential and judicial interpretation continues in cases where the law is silent, ambiguous, or open to multiple interpretations.

Section Two: Distinguishing Procedural Silence from Other Similar Situations

As previously discussed, procedural silence concerns the internal behavior of a person, which is translated into a tangible reality when the individual undertakes a specific judicial act. Because of this translation into concrete action,

procedural silence can be confused with other internal states that appear similar when manifested in practice. Therefore, it is necessary to clarify the distinctions between procedural silence and other analogous situations. Accordingly, this section is divided into three branches: the first branch addresses the distinction between procedural silence and implicit expression; the second branch explains its distinction from the principle of good faith; and the third branch examines its distinction from apparent silence. The branches are as follows:

- 1- Distinguishing Procedural Silence from Implicit Expression
- 2- Distinguishing Procedural Silence from the Principle of Good Faith
- 3- Distinguishing Procedural Silence from Apparent Silence

1- Distinguishing Procedural Silence from Implicit Expression

A fundamental requirement for demonstrating the will and indicating its existence in a socially tangible way is expression, which serves as a means of disclosure, whether the expression of the will is explicit or implicit. (Al-Sanhouri,). Explicit expression constitutes a direct and familiar method intended to convey the will of the declarant clearly to the person to whom the will is directed. (Abu-Steitt, 1963)

Implicit expression of will, on the other hand, constitutes an indirect method of inferring the existence of will without using explicit means of expression and in an unconventional manner. (Al-Sanhouri, n.d.). Some legal scholars define implicit expression as one in which the form taken is not, in itself, intended to reveal the will, yet it cannot be interpreted without assuming the existence of that will. It discloses the will indirectly by deriving it from the person's actions, which merely serve as indicators reflecting that will. (Daghash, 2008). Implicit expression relies on several legal principles, including the principle of "evidence of the unseen through the apparent", meaning that matters difficult or impossible to ascertain directly, due to their hidden or unregulated nature, are inferred from what indicates their existence. The apparent thus serves as proof of the underlying reality, used in establishing rights and proving judgments. (Haider, n.d.)

Hence, the similarities and differences between procedural silence and implicit expression become clear:

Paragraph One: Similarities between Procedural Silence and Implicit Expression

Both procedural silence and implicit expression share the characteristic of not involving direct declaration by the concerned party. Instead, a legal position is inferred indirectly. Both reflect latent will, are subject to judicial interpretation, and produce legally significant effects, such as tacit acknowledgment or forfeiture of a right if the legal conditions are met. Both are deduced from external conduct or behavior.

Paragraph Two: Differences between Procedural Silence and Implicit Expression

Implicit expression has a broader scope, encompassing both procedural acts and substantive matters, whereas procedural silence is confined to procedural acts. Implicit expression generally concerns legal acts (such as acceptance or release), while procedural silence applies specifically to judicial procedures (such as appeals, attendance, or pleas). Implicit expression is inferred from external actions with legal significance indicating a specific intention, whereas procedural silence is deduced from mere inaction under particular conditions determined by the court. Finally, implicit expression primarily affects rights and obligations, whereas procedural silence pertains to the conduct of the case and the organization of litigation.

2- Distinguishing Procedural Silence from the Principle of Good Faith

Various definitions of good faith have been proposed by legal scholars. Some define it generally as "an intention free from deceit or fraud, representing a sincere and honest will, opposed to bad faith or the desire to harm others." (Al-Fadhil, 1991). Others define it as "a justified ignorance of a fact or event that forms the basis for determining the legal consequences, such that the resulting legal effect differs depending on whether the ignorance or knowledge of that fact or event exists." (Al-Jabouri, 1991). The principle of good faith has also been defined as "the intent to comply with the legal limits imposed by procedural law, or the will to adhere to the law in undertaking all legal acts and procedures, based on a mistaken belief under the existence of justified ignorance of a defect that would render the act, fulfillment, or procedure valid." (Mahmood, 2009)

It has further been described as "a legal and ethical duty that a party must observe. If a party acts in accordance with this duty or intends to comply with it, this constitutes good faith; conversely, if a party intends to deviate from this duty, it does not constitute good faith but rather constitutes bad faith." (Al-Sharqawi, 2018). Some procedural law scholars have defined it as "observing the duties of honesty and integrity by the parties and the judge when undertaking procedures in civil litigation, in order to safeguard the rights and interests of individuals and groups; conversely, fraud or deceit in litigation and enforcement constitutes a violation of this principle and a breach of duty." (Mahmood, 1994)

The most appropriate definition of the principle of good faith within procedural law is the absence of any party in a civil case, or any individual responsible for adjudicating the dispute who is involved in it, from undertaking judicial procedures with a suspicion of procedural fraud or deception. Rather, all actions must be based on procedural honesty and sincere intent. (Yassin, 2021). One characteristic of the procedural good faith principle is that it is linked to knowledge of procedural law, rather than ignorance of it. Proper conduct of litigation procedures requires full compliance with legal obligations, as the validity of procedural acts derives from good faith, even implicitly, as reflected in Articles (44–47) of the applicable Code of Civil Procedure. (Articles 44–47 of the Iraqi Code of Civil

Procedure; corresponding to Articles 12 and 14 of the Egyptian Civil and Commercial Procedure Code in force; and Articles 1 and 9 of the French Code of Civil Procedure in force.). From the above, the similarities and differences between procedural silence and the principle of good faith can be outlined:

Paragraph One: Similarities between Procedural Silence and the Principle of Good Faith

Procedural silence and the principle of good faith are closely related and often overlap in civil procedural law, with a part-to-whole relationship between them. Both are connected to knowledge of procedural law, as the legal consequences differ depending on whether the relevant facts or events are known or unknown. Both produce procedural effects, contribute to reducing delays or indirect manipulation, and are based on implicit assessment and observable conduct rather than explicit statements.

Paragraph Two: Differences between Procedural Silence and the Principle of Good Faith

The principle of good faith differs in its legal nature, as it is a general principle governing the conduct of the parties in a case, whereas procedural silence is a specific stance taken by a party through refraining from performing a particular procedural act despite having the ability to do so. Procedural silence is derived from procedural rules, unlike good faith, which is rooted in general principles of civil and procedural law. The two also differ in terms of consequences. If a party violates the principle of good faith, the sanction is primarily moral or evaluative rather than procedural, such as compensation or denial of acceptance. In contrast, the consequence of procedural silence is procedural: nullification occurs if the act is not performed according to the legally prescribed form, or the right is forfeited if procedural deadlines are not observed.

3- Distinguishing Procedural Silence from Qualified Silence

Qualified silence is that form of silence which contrasts with pure silence, and is regarded as an exception thereto. Pure silence is a merely passive act and cannot serve as an expression of will, neither as acceptance nor rejection, neither as an offer nor as acceptance. (Mousa, 2002). Qualified silence, however, refers to silence that is surrounded by particular circumstances which give it the connotation of acceptance and render such an inference more probable. These are circumstances where a response would ordinarily be expected in the event of rejection; thus, if the offer is not refused within a reasonable time, silence is deemed to constitute acceptance. In this sense, silence appears outwardly inactive yet inwardly directed towards producing legal effect in light of the surrounding circumstances that attach to it and confer upon it a specific meaning. (Faraj, 1980). Accordingly, it becomes a conduct of legal significance, serving as a means of expressing will, and is therefore considered acceptance whenever external circumstances favor such an interpretation. This is why it is described as “qualified,” owing to the circumstances accompanying it that weigh in favor of construing it as acceptance. Such circumstances surrounding silence may precede it, accompany it, or follow it. (Habib, 2003). Qualified silence is regarded as implied acceptance when coupled with surrounding factors indicating consent. Thus, failure to reject an offer within a reasonable time amounts to acceptance. Indeed, silence is deemed acceptance where prior dealings exist between the parties and the offer is connected to those dealings, or where the offer is of pure benefit to the other party and therefore does not require express acceptance. In such cases, implied acceptance emerges, and silence acquires meaning according to the circumstances that accompany and surround it. (Faraj, 1980).

From the above, the similarities and differences between procedural silence and qualified silence can be outlined as follows:

Paragraph One: Similarities between Procedural Silence and Qualified Silence

Procedural silence and qualified silence are similar in that both constitute exceptions to mere silence. Both are connected to knowledge of the fact or procedure and the presence of an interest in expressing a position. Each represents silence with legal effect, based on the meaning inferred from refraining under specific circumstances where explicit expression is not assumed, but a legal intent is presumed despite the absence of direct declaration.

Paragraph Two: Differences between Procedural Silence and Qualified Silence

Qualified silence includes the substantive scope of legal acts, whereas procedural silence is limited to formal procedural acts within procedural law. Qualified silence produces substantive effects, such as creating obligations or completing a contract, whereas procedural silence is not, in itself, an expression of will. In qualified silence, an intent is presumed and inferred from the context and surrounding circumstances.

FIRST: CONCLUSIONS

1. The Iraqi legislator, in the Civil Procedure Law, like its comparative counterparts, did not set clear rules for procedural silence to define its nature, leaving the matter to judicial and doctrinal discretion. This has led to varying interpretations and inconsistent judicial rulings in similar situations, weakening the stability of procedural rules.
2. Procedural silence does not have a single nature; rather, its nature is determined according to its procedural context, the fulfillment of its conditions, and the type of procedure to which it applies.
3. Although there is overlap between procedural silence and other similar situations, this overlap does not imply identity. Distinguishing between these concepts is essential to ensure proper judicial practice.

SECOND: RECOMMENDATIONS

1. It is necessary for the Iraqi legislator to explicitly regulate procedural silence by defining its nature and scope, and by drawing clear boundaries between it and other similar situations. This would contribute to legal certainty and provide judges with a clear reference when interpreting and applying the law.
2. Establishing more consistent standards for handling cases of procedural silence is essential. Unifying judicial approaches would enhance trust in rulings and stabilize judicial transactions.

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