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Opinion

All Judgments Have To Be Run Off. About The Obligation to Resolve and the Fundamental Right to Resolve

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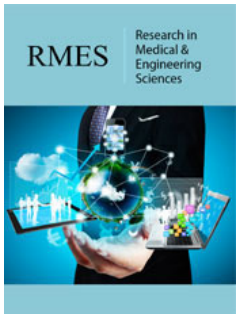
ISSN: 2576-8816



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Submission: April 03, 2020

Published: May 07, 2020

Volume 8 - Issue 5

How to cite this article: Jorge Isaac Torres Manrique. All Judgments Have To Be Run Off. About The Obligation to Resolve and the Fundamental Right to Resolve. Res Med Eng Sci. 8(5). RMES.000698. 2020. DOI: 10.31031/RMES.2020.08.000698

Opinion

The non-observance of the obligation to resolve (and its counterpart, the right to have it resolved) constitutes a basilar issue that contributes to the deterioration of the administration of justice. This, while it is well known what the defendants have to endure painfully, in order to obtain not only an answer to their claim or conflict of interest, in each stage of the process, but also, the execution of the sentence, which said Incidentally, it is poorly understood as a fundamental right and not as an obligation or duty of the magistracy.

The obligation to resolve, also known in Spanish and Argentine law as duty to resolve, embraces a two-sided nature, that is:

A. To end the process and

B. Also, resolve it, that is, execute it ex officio. In this regard, we have to materialize the obligation to resolve, is configured in the complete embrace of the essential elements that make up its essential content. Thus we have: Express administrative resolution (objective element), Notification of the resolution (formal element) and Deadline for its execution (temporary element). The obligation to resolve (and therefore, the right to have it resolved) is present in all three stages mentioned. Therefore, it must be said that under its actions a process or process is not allowed to remain stagnant, paralyzed, condemned to ignominy; that is, without final resolution or execution, both ex officio.

Therefore, we gather that in cases where a judicial sentence has not been executed, it is now ex officio, at the request of the party; the obligation to resolve has not been fully configured or met. For its part, the fundamental right to be resolved is registered in:

A. Art. 3., of the Peruvian Political Constitution, which in relation to Constitutional Rights. Númerus Apertus, points out: The enumeration of the rights established in this chapter does not exclude the others that the Constitution guarantees, nor others of an analogous nature or that are based on the dignity of man, or on the principles of sovereignty of the people, of the State democratic law and the republican form of government , ‘

B. In Inc. 3 ab initio, of Article 139.-, of the Political Constitution, about principles of the principles and rights of the jurisdictional function, recommends: The observance of due process and judicial protection.

And it is that, the effectiveness of the judicial protection becomes present, when said sentence is opportune and due as effectively executed (effective protection). Therefore, it must be seen that between due process and effective judicial protection, there is a marked difference, that is, while the first:

A. develops in the course of the procedural path -procedural litigation, specifically between the jurisdictional protection and its effectiveness –

B. the second, manifests itself at the beginning (when the jurisdictional apparatus protects the demand of the defendant - legal protection) and final (when it is executed the due and timely sentence) of said procedural becoming. Ergo, there is therefore a

very close relationship between them. Finally, due process and guardianship referred to are complementary, but they do not mean the same thing. The American Convention on Human Rights, generically registers the duty to resolve. Thus we have that in Inc. 1., of Art. 8., in reference to the Judicial Guarantees, establishes: Everyone has the right to be heard, with due guarantees and within a reasonable time, by a judge or competent, independent and impartial court, established previously by the law, in the substantiation of any criminal accusation formulated against it, or for the determination of its rights and obligations of civil, labor, fiscal or any other nature [1,2].

Next, as a case closer to the obligation to resolve, we can refer to that of Perozo et al. Venezuela, which refers to the allegation of a preparatory investigation of almost six years, the Inter-American Court of Human Rights once again referred to the complexity, activity of the interested parties and activity of the authorities. It concluded that it was due to inactivity for long periods, between three and six years, that the investigation had not been conducted diligently and effectively (IDH Court. Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009, paragraphs 333 to 337). Them, the obligation to settle constitutes a form of judicial guarantee. We consider that the non-execution of a judgment ex officio violates fundamental rights:

A. To be resolved,

B. Greater speed,

C. Reasonable time,

D. Effective judicial protection,

E. Diligence,

F. Effectiveness, and

G. Promotion of job. Such violations not only entail principles and rights on legal premises, but also extra-legal ones, such as the discipline of administration, mainly verbi gratia: Public value, Good Administration, and Good Faith.

In sum, we maintain that the execution of sentences not only registers a two-sided nature:

A. The first, which corresponds to the unrestricted fundamental right to be resolved that assists the defendant or jurisdiction, and

B. The second, to the obligation to decide (that is, to execute the sentence ex officio), which assists the magistrate. We also consider that both the right to be resolved, as well as the obligation to resolve, find legitimate validity and application not only in court, but also, in their counterparts, administrative, communal, arbitration, military and private corporate; that is, in all jurisdictions.

Although it is true that, in strictu sensu, the obligation or duty to resolve obliges the magistrate to execute his sentences, as well as those ordered to notify by warrant, does not mean that the defendants cannot do it. In this sense, we are of the opinion that the procedural parties may request it by default, in case the magistrate has not done so. However, said petition must focus on urging the principal as initially complying with the obligation to resolve and secondly, the fact that his judiciary and the defeated party are violating their constitutional right to have the case won resolved, that is, it to run. The fact of not executing a sentence ex officio involves three important points:

A. Failure to observe the magistrate's obligation or duty to resolve,

B. Violation of the aforementioned fundamental rights of the defendants, and

C. Promotion of the expired party in the process, does not observe the strict fulfillment of the judicial resolutions, in addition to continuing to violate the fundamental rights of the plaintiff.

Thus, the judicial disposition of a file with sentence does not fit in any extreme, alleging inaction of the parties for the term of law, while what is appropriate is its immediate judicial execution ex officio. On the other hand, we consider that the fundamental right to have it resolved should not have the same treatment in court as administrative. And it is imperative to highlight that the times or deadlines used in administrative processes cannot be unimism, compared to those of a judicial nature. This, because the seconds long exceed the first. Although, in parentheses we record that certainly in said company, not only time matters, but also money and effort. And by the way, this triad configures or embraces the principle of procedural economy.

In this sense, we are of the opinion that the right to resolve must have a greater importance of attention or safeguard in court. That is, a treatment with a sort of supercharged or superlative right to resolve. The basis is that, as a rule, administrative processes must exhaust their route, as a requirement to access the judicial route. That is, exhausting the administrative route. Therefore, it is to be considered that in said journey the administered company already had to invest or suffer the waiting time before said refusal, to gain access to said exhaustion. Ergo, it would not be reasonable for the administrator to continue with said wait or rather, restart a longer waiting period (in addition to the time invested in the administrative headquarters). Even more so, it is well known that the times that the judiciary takes to resolve each stage of the process are much longer. Times that added together, can easily reach ten years.

Both the obligation to resolve and the right to have it resolved are binding. Otherwise, the following questions may be asked:

A. What is the use of the plaintiff in having a court ruling favorable to his person, when the plaintiff does not deign to execute it?

B. Would the Judiciary, as well as the Law, embrace its raison d'être, by not executing ex officio, due as appropriate, the resolutions it issues?

C. Can it be called justice to have said resolution and that after even several years, it does not materialize in its execution?

D. iv) What sense would it have to have recourse to the Judiciary, if through it it is not possible to assert the violated fundamental rights of the jurisdiction, having even won the process?,

E. Can the defendant loser of a judicial process, assume a discretionary position, of open contempt for a judicial sentence?

F. Can the defendant and defeated party through a judicial process, declare itself alien, foreign to the Peruvian legal system, within the prevailing Constitutional State of Law?

G. vii) Should the judiciary and, where appropriate, the Judicial Control Body, legitimately allow and allow it ?

It should be noted that, in case of non-observance of the obligation to resolve, the magistrate of the case would incur the crime of omission, refusal or delay of functional acts, registered in the first paragraph, of Article 377.-, of the Penal Code , which states: The public official who illegally omits, refuses or delays any act of his office, will be punished with a custodial sentence of no more than two years and a thirty to sixty day fine. And also, the same for the defeated party in a judicial process, that is, the probable commission of the crime of disobedience and resistance to authority, recommended by the first paragraph of article 368º of the Penal Code, which legalizes: He who disobeys or resists the order legally issued by a public official in the exercise of his powers, except in the case of his own arrest, he will be punished with a custodial sentence of not less than six months nor more than two years. Both the obligation to resolve and the fundamental right to have it resolved are not positivized in the Peruvian legal system, either at the administrative, judicial, or legal and constitutional level; therefore, we postulate its prompt positivization. Said legislative and constitutional deficiency in turn prevents the realization of the aforementioned fundamental rights. Thus, it is imperative, the legislation and strict observance of fundamental rights, from a perspective not only favourable to the rights of public officials, but basilarly, in safeguard of the fundamental rights of the administered and jurisdicted, as it is, the obligation to resolve and the right to have it resolved. That same approach is that it must be adopted for the corresponding effectiveness, dissemination, training and awareness of fundamental rights.

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