

Examining the Principle of Speed in Urgent Litigation in Light of a Critical Analytical Review of Article 313 of the Civil Procedure Code and Its Practical Challenges

Erfan Mousa Zadeh¹, Nima Norouzi²

¹Department of Judicial Sciences, Faculty of Law and Judicial Sciences, University of Judicial Sciences and Administrative Services, Tehran, Iran

²Research Fellow and Advanced Seminary Scholar (Sutūh 'Ulyā & Dars-e Khārej), Deputy for Research, Qom Seminary, Qom, Iran

Abstract

Article 313 of the 1979 Civil Procedure Code is one of the key provisions in the realm of provisional orders. It allows requests to be submitted either in writing or orally, introducing flexibility into Iran's judicial system. The primary philosophy behind this article is to provide immediate protection of individuals' rights in situations where delays in litigation could result in the loss of rights or irreparable damage. According to this provision, an oral request is only valid if it is documented in the court's minutes and signed by the petitioner, which grants it official status and legal validity. This article, through a descriptive-analytical approach, reviews and analyzes the text of Article 313, comparing written and oral requests, and highlights the advantages and limitations of each. Furthermore, using judicial sessions and practical court procedures, it critiques challenges such as the disagreement over the necessity of filing a petition, the ambiguous boundary between securing a claim and provisional orders, and the potential misuse of oral requests. The findings suggest that while Article 313 is an effective tool for achieving prompt justice, its implementation without clear guidelines could lead to inconsistent rulings. The study concludes with the recommendation to develop executive guidelines, explicitly distinguish similar institutions, and design standardized forms to enhance the effectiveness and consistency of the judicial process while preserving the supportive philosophy of provisional orders.

Keywords: urgent litigation, provisional and temporary measures, principle of speed, principle of correspondence, legal request, judicial minutes.

Extended Abstract

Article 313 of the 1979 Civil Procedure Code holds significant importance in the Iranian legal system, especially concerning provisional orders. This provision allows litigants to submit requests for provisional orders either in writing or orally, thereby introducing flexibility into the judicial process. The primary goal behind this article is to ensure that individuals' rights are protected in situations where delays in legal proceedings could lead to irreversible damage or loss of rights. This extended abstract critically examines Article 313, offering a comparative analysis of written and oral requests, their legal validity, advantages, limitations, and the challenges that arise in the application of this provision.

Article 313 of the Iranian Civil Procedure Code serves as a cornerstone in urgent litigation, allowing courts to issue provisional orders to protect the rights of individuals pending the final decision in a case. Provisional orders are intended to provide immediate protection in situations where delay could result in harm that is impossible or difficult to remedy. The flexibility introduced by allowing both written and oral requests is designed to expedite the legal process and address urgent matters swiftly. However, the law specifies that oral requests only become valid if they are documented in the court's minutes and signed by the petitioner, thus ensuring that such requests are treated as formal legal actions.

One of the central aspects of Article 313 is the distinction between written and oral requests. Written requests are typically formal, detailed, and leave a clear, documented trail, which provides both clarity and a record of the legal process. On the other hand, oral requests offer a quicker method for obtaining provisional orders, especially in urgent cases. However, oral requests come with challenges. Their validity depends on their documentation in the court's minutes, which introduces the potential for inconsistency and ambiguity.

In practice, the court's requirement that oral requests be recorded raises questions about the administrative burden on the court system and the potential for procedural errors. Written requests, by contrast, are more structured and provide a clear legal record. The study suggests that while oral requests can expedite the process, they may also open the door to inconsistencies in how provisional orders are granted, depending on the courts' interpretations and practices.

Several challenges arise from the application of Article 313 in Iran's judicial system. First, there is ambiguity regarding the necessity of filing a formal petition for provisional orders. While the article allows for oral requests, the lack of clarity on when such requests should be made orally versus in writing creates confusion. In some cases, litigants may choose to file oral requests without fully understanding the legal implications or without considering the requirements for documenting the request. This can lead to discrepancies in how provisional orders are granted and increase the risk of inconsistencies in the judicial process.

Second, there is an unclear boundary between securing a claim and provisional orders under Article 313. Provisional orders are intended to provide temporary relief until a final judgment is issued, but distinguishing between a provisional order and an order that secures a claim can be difficult in some situations. This lack of clear distinction can result in the misuse of provisional orders, where they may be treated as permanent measures inappropriately, potentially undermining the integrity of the judicial process.

Another challenge is the potential for misuse of oral requests. Since oral requests require documentation and signature, there is always the possibility that this procedure may be used improperly to bypass the more thorough written request process. This could lead to arbitrary or hasty decisions that lack the necessary legal foundation.

Article 313, despite its challenges, offers several advantages. Its flexibility allows the judicial system to address urgent cases quickly, which is crucial in protecting individuals' rights. The ability to submit oral requests expedites the process, especially in cases where waiting for a formal written request would cause harm or delay justice. Additionally, the fact that oral requests must be

documented provides a safeguard to ensure that such requests are not made arbitrarily and are subject to formal legal review.

However, the limitations of this system are evident. The ambiguity in the requirements for oral versus written requests can lead to procedural inconsistencies. Furthermore, the lack of clear distinctions between provisional orders and claims can complicate legal proceedings and result in the misuse of provisional measures. Moreover, the potential for misinterpretation or administrative oversight when recording oral requests introduces an element of uncertainty into the judicial process.

The study suggests several reforms to enhance the effectiveness and consistency of provisional orders under Article 313. First, the introduction of clearer executive guidelines for the application of provisional orders is crucial. These guidelines would provide detailed procedures for when and how oral requests can be submitted and the specific documentation required to ensure their validity. Additionally, there should be a clearer distinction between provisional orders and orders that secure claims, reducing the risk of misuse of provisional measures.

Second, the development of standardized forms for both oral and written requests could streamline the process, reduce administrative errors, and ensure that all requests meet the necessary legal requirements. These forms could help guide litigants and court staff in the proper handling of provisional order requests.

Finally, the judicial system could benefit from additional training for judges and court staff to ensure a uniform understanding of the requirements and procedures surrounding provisional orders. This would promote consistency in rulings and help mitigate the risk of errors or inconsistent decisions.

In conclusion, Article 313 of the Iranian Civil Procedure Code serves as an important tool for expediting urgent litigation and protecting individuals' rights in situations where delays could result in irreparable harm. While the provision's flexibility in allowing both written and oral requests offers significant advantages, it also presents challenges that could lead to inconsistencies in the application of provisional orders. To address these challenges, it is essential to establish clear executive guidelines, distinguish between provisional orders and claims, and introduce standardized forms to ensure the consistency and efficiency of the judicial process. By implementing these reforms, the judicial system can better serve the principle of speed and fairness in achieving justice.

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