



## The Effect of Pivotal Efficiency Management on Criminal Proceedings

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### **Abstract**

During last decades, the managerialism model has predominated to solve structural and managerial problems in public service organizations. The Iranian judiciary has used some components of this model for years to solve the problem of lack of resources and vast number of cases. Since judges are the main actors of managerialism in criminal proceedings and this area, like all social fields, is based on a mental semantic system, so identifying the set of conditions, strategies and consequences of adopting strategies in it requires the application of the qualitative methodological method. Considering these requirements and based on the grounded theory, the present article investigated and analyzed the grounded rules of managerialism in criminal proceedings through interviews with judges of Kerman's criminal branches. The analysis of data showed that according to all interviewees, the officials of the criminal justice system have set efficiency-based managerialism in order to solve the problem of high volume of cases, while this policy has reduced the accuracy of trials, increased judicial errors, reduced judge resilience, made judges stressful and stayed away from scientific studies. Therefore, it may conclude that judgment has moved away from its original meaning and has undergone a fundamental transformation (metamorphosis).

**Keywords:** *Judgment Transformation; Judicial Incarceration; Pivotal Efficiency*

### **Introduction**

One of the most important concerns of criminal justice systems is the increase of the prison population. Iranian criminal justice system also has been taken under such concern so that its manifestation may be observed in the Islamic Penal Code and Criminal Procedure Code adopted in 2013 to reduce the prison population. The clue to the effectiveness of these legal measures is to pay attention to the increasing causes of the prison population, especially the judicial and in-system ones. The present study, based on the participation of twenty judges of Kerman's criminal branches and the data collected from in-depth interviews with them, without imposing an external theory, seeks to answer to the questions of "what are grounded rules (actions, reactions and consequences) on pivotal efficiency in the criminal proceedings system in Kerman city?" and "what are their characteristics?"

The paper therefore while referring to the existing theoretical studies on managerialism, based on the in-depth interviews, will identify, understand and describe the grounded rules related to the pivotal efficiency in the Kerman judiciary.

Field study of the issue authenticated the research results and distinguished it from other similar researches; Although researches on criminal managerialism have been conducted in recent years in Iran, most of them have not paid enough attention to the reasons of this problem in the judiciary and, consequently, its study based on an appropriate methodology. The outcomes of this research would be effective in the field of criminal policy, for it presents the grounded rules of the judiciary regarding managerialism in a completely new and scientific way. The legislators and the judiciary then may amend the laws, training materials of judicial trainees and judges, and other structures under the criminal policy set.

In order to answer the questions, after stating the research literature (1), the research methodology is explained (2), and finally the research findings are presented (3).

### ***Research Literature***

In short, managerialism means increasing the use of business management models in order to increase the profits and efficiency of governmental organizations (Danaeifard and Alizadeh Thani, 2011: 20). Accordingly, criminal managerialism is to increase efficiency and reduce costs of criminal proceedings (Ghasemi Kahrizangi and Farajiha, 2015: 30).

The key concept used widely in criminal managerialism in spite of its economic bases is “efficiency”<sup>1</sup>. Among the various concepts of efficiency in economics and management, the efficiency index in production is closer to the space of judgment in criminal cases, because efficiency in this sense is a description of the ratio of resources required for production (in the case of courts: cases), as opposed to the output of that system (in the case of courts: statements). In this system, the efficiency is obtained by comparing the used resources and gaining different results in the same time. Therefore, a criminal court that has heard six cases in one day is considered more efficient than a court that has heard four cases in the same period. It is possible of course to consider two indicators in this comparison: The first is that in a criminal justice system, the efficiency indicator may be the reduction of resources required to track the same number of cases in the past. Another indicator is increasing the number of cases tracked with the same resources and facilities as were before. The second indicator has today become the main concern of the criminal justice system in the field of case management (Ibid: 36).

A review of theoretical researches on managerialism shows that in recent decades, as structural and managerial problems in public service organizations have created problems such as insufficient funding and inefficiency of short-term and long-term plans for governments, the process of solving complex and multidimensional problems of this area has become one of the priorities of theorists and thinkers of governmental administration and statesmen and agents of politics. This process, based on solid theoretical foundations and convincing justifications of policymakers, led to the gradual formation of the “managerialist” model (Hood, 1991: 6).

The influence of managerialism on the criminal justice system has been gradual, slower than other parts. The most important reason is the organizational bases and cultural differences in the institutions of the criminal justice system. Accepting the central and hierarchical systems, as well as, the specialization in this field, the courts strongly opposed the entrance of managerialist teachings (Freiberg, 2004: 2). Despite all oppositions, however, the managerialist model gradually dominated the criminal justice system. The intensification of pressures of interruptions and obstructions of the inefficiency of

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<sup>1</sup>. Efficiency means the least time or energy consumed for the most work done. In fact, the ratio of the actual output obtained to the expected output. Efficiency is quantitatively measurable, with the greatest emphasis on speed, reducing resource loss, and increasing productivity. Retrieved from <http://motamem.org>

judicial systems in controlling crime and gaining public trust, increasing crime rates and fear of crime, delays in trials and unconventional costs of criminal proceedings are considered as the most important reasons for this dominance.

### **Research Method**

The present study was conducted in a grounded method. This method is based on qualitative methodology and interpretive paradigm (Lotfabadi, 2007: 14). Interpreters believe that human and social realities are constructed in a social context and therefore their meaning is a function of the perception of the participants in that particular community (Kenneth and Borland, 2001: 5). Unlike the quantitative method that follows the discovery of the correlation between several finite variables, in the qualitative method, on the one hand, the number of variables is not limited and, on the other, it does not seek to discover the correlation between variables; Its existential reasons are among the goals of a qualitative research (Iman, 2014: 154).

Therefore, it is clear that according to the research method of this research, the creation of the theory is followed by the study of those who are involved in the process of similar action or interaction. What is important in this method are data (Khan, 2014: 224). In fact, the key point in theorizing based on this method is that the theory is not imposed on a research from outside, but it is produced or based on the data obtained from the participants who have experienced a similar process (Strauss and Corbin, 1998: 15-16). In this regard, Gilinan and Domahidy believe that the richness of an interpretive research in the field of criminal justice depends on the importance of beliefs, values and national elements in organizational life (Gilinan and Domahidy, 1995: 138).

Regarding that managerialism in the judiciary is one of the most important judicial areas to increase the prison population (Pourmohiabadi, 2018: 109-90) and relying on the fact that, like all social realities, it is created by the criminal justice system (including judges, lawyers, officers, etc.) based on a series of meanings and in a symbolic interaction, this study focuses only on discovering and understanding the meaning and rules of this action from the perspective of criminal judges in Kerman. It is clear that discovering the meanings and rules of this action from the perspective of other actors in the criminal justice system, including lawyers, judicial officers and non-governmental organizations, requires another qualitative research and is basically out of the scope of the present study.

Accordingly, the goal pursued in this article is understanding the meaning that each judicial authority participating in this study gives to its action regarding managerialism and based on this semanticization, rules of action are formed between him and other actors. Describing this system of subjective meanings accurately, the researcher will achieve the meaning that the subjects attach to their action and social world (Taylor, 1970: 288-291) and, as a result, will identify the grounded rules of the context under study.

### **Statistical Sample**

The study was conducted in participation of Kerman's judicial judges. For familiarity of the researcher with the research field and making a deep and effective connection with the participants are of the basic tools for conducting good interviews and getting rich data in qualitative researches. The situation of the number of prisoners in Kerman province also doubles the need for such participation. According to the Chief Justice of Kerman Province, the total population of prisoners in this province in 2015 was 12000 and the rate of the population of prisoners in the province was 430 per 100000 of the province population. In the same year, the prison population was 290 nationwide. In other words, the population rate of prisoners in Kerman province in 2015 was 140 cases higher than the national average. The yearbooks published by *the Deputy of Statistics and Information of Program and Budget*

*Organization* of Kerman Province<sup>2</sup> also shows the ascending growth of the total prison population in Kerman Province between 2011 and 2016. This growth is clearly observed in the table below.

Table (1): “Number of prisoners in Kerman province between 2011 and 2016”

Year	Prison Population
2011	11351
2012	11903
2013	11587
2014	11685
2015	12667
2017	12386

The participants are 20 judges of criminal courts (1) and (2), the public prosecutor's office and the appellate court of Kerman Province, whose basic information are presented in *Table 2*. They were selected using two targeted sampling strategies, namely maximum oscillation and snowball. Maximum oscillation means selecting few items but with the greatest variety in order to reveal the range of fluctuations and differences in the field. Snowball sampling is a method in which participants are asked who will be the next participant who knows about the category or concept. (Flick, 2008: 50). Participants have a lot of variety in terms of maximum oscillation strategy. They have been selected from various criminal courts. Sampling was also done from young and old, male and female judges. Interviews continued until it reached a theoretical saturation. The latter is a criterion for determining the number of samples and based on it, the researcher continues interviewing until the answers to the main research questions and information about all the desired categories are saturated. This happens when the study is completed and no new information related to the subject is obtained. Therefore, in qualitative research, sample size is considered synonymous with data completion or data saturation (Grove and other, 2014: 66).

Table (2): “basic characteristics of the participants”

Participant ID	Age	Gender	Education	Occupation History	Type of Degree (Seminary/University)
A	34	F	MA	17	University
B	33	M	PhD Candidate	5	University
C	34	F	PhD Candidate	14	University
D	41	M	MA	15	University
E	35	M	MA	8	University
F	45	M	BA	17	University
G	50	M	Ijtihad Student and PhD	28	Seminary and University
H	36	F	MA	16	University
I	45	M	Ijtihad Student and PhD Candidate	18	Seminary and University
J	40	M	MA	26	University
K	50	M	Ijtihad Student and MA	26	Seminary and University
L	33	M	MA	8	University
M	32	M	MA	7	University
N	31	M	MA	6	University
O	47	F	MA	15	University
P	52	M	PhD Candidate	27	University

<sup>2</sup>. Retrieved from <http://amar.kr.ir>.

Q	32	M	PhD Candidate	7	University
R	34	M	Ijtihad	8	Seminary
S	37	F	MA	16	University
T	51	M	MA	28	University

### ***Data Collection Tools***

In addition to the mentioned theoretical issues, in-depth interviews have been used here to collect data. An in-depth interview is a conversation between at least two persons, that is commenced on a specific purpose and in order to obtain certain information by the interviewer and focuses on the content specified by the research objectives (Delavar, 2014: 64). Each interview has been done in several stages and lasted between 45 minutes to one hour and half. The researcher also communicated with the participants during the research to refer to them when needed for validation as well as theoretical saturation. Three types of qualitative and in-depth interviews formed the base of data collection as follow: informed conversational interview, public guide interview and standard open interview (Gall et al., 2007: 2/1035). All three of Paten's proposed approaches were used here respectively as follow: Firstly, the informal conversational interview was used to achieve the concepts and categories. Secondly, the categories and concepts in the interview process were followed up using the public interview guide. Finally, when the outlines of interviews were formed by the concepts and categories, the open questions were designed, and the process continued until the theoretical saturation.

### ***Data Analysis Method***

Coding method is used to analyze the data. Coding in the field theory method is done in three ways: 1- open coding 2- axial coding and 3- selective coding. In formulating a grounded theory, the researcher begins with open coding. Open coding seeks to present data and phenomena in the form of concepts. Phrases or propositions are categorized based on semantic units to attach concepts to them (Strauss and Corbin, 1998: 18). In the next step, the codes obtained from open coding, which are directly related to the research question, are categorized. The categories are re-linked to codes that are more abstract than the first-step codes. In fact, axial coding involves the process of linking subcategories to major categories. Selective coding, as the third stage of coding, continues axial coding at a more abstract level. At this stage, the formation and connection of each classification with other groups is described (Flick, 2008: 50). At this very critical stage, the researcher must fully interact with the data, understand and refine the relationships between the categories, and finally extract the theory. Thus, for theorizing through the data collection process, the analyst simultaneously collects, encodes, and analyzes the data and decides what data must be collected and from where are sought, while formulating the theory as well (Glaser and Strauss, 1967: 6).

### ***Research Findings***

Based on the findings of the study (the paradigm model of which is shown below), all participants believed that central pivotal efficiency in criminal proceedings is one of the most important judicial causes for increasing the criminal population of prisoners.



Figure (1): The paradigm model of central pivotal efficiency in criminal proceedings

Participants argued that criminal justice decision-makers have politicized efficiency-based statistics to address the high volume of cases. According to them, one of the criteria for evaluating the performance of judges for overtime work and selecting the best judge is the efficiency of the judge. They argued that such an approach in the judiciary would lead the judiciary to deviate from its original principles and become formal. The judge, whose only concern should be a fair trial and the satisfaction of own conscience, is more concerned with the positive record of his trials. This policy has deprived them of the opportunity to walk the path of fair justice. According to the participants, judicial incarceration will be the result of this situation; The consequence that managerialism has brought about it with the metamorphosis created by it in judgment. The above categories outlined in Figure 1 will be explained in the following paragraphs.

### 1. Pivotal Efficiency of Criminal Justice System

According to the research findings, one of the problems that has seriously challenged the criminal justice system is the high volume of cases. The participant “T” stated in this regard: “If I have 6 or 7 cases per day to be processed, which may take up to 2 pm due to many cases, this workload will definitely affect the qualitative processing and [hence] sacrifice quality for quantity.”

The participant of “Kh” believed too: “When the standard of processing cases is 60 but 120 cases are referred, the accuracy of processing is affected.”

The high volume of cases is such that, according to participant “Z”: “The good spirit of the judges on Thursdays is because of reducing their workload.”

It is as if this dilemma has exhausted the judges’ spirits. To solve many problems caused by the high volume of cases, the judiciary has adopted a policy of quantitativeism based on increasing efficiency, according to which the criterion of positive performance of judges is their positive statistics in handling and hearing cases. This policy was explicitly stated by participant “J”: “Currently, the criterion for the positive performance of judges is their positive statistics in terms of incoming and outgoing cases.”

“With regard to the infrastructural problems in the judicial system, especially the high volume of criminal cases and quantitativeism, the judge cannot find the elements of the crime and prove the guilt with high accurately,” said participant “Ch”. “Therefore, we see that the judge in his statement which should indicate all the elements of the crime and its positive reasons, in such a way as to show a summary of the outcome of the case, has a clear conflict in originating the sentence and last lines of his sentence do not support first lines. This is due to quantitativeism and inaccuracy in the profession.”

He added that the high volume of cases and quantitativeism not only reduces the accuracy in proving the guilt and elements of the crime, but also makes it difficult to individualize the punishments. According to this participant:

“With the high number of criminal cases, the judge cannot individualize the punishment of the criminal accurately. For in this case, paying attention to the defendant’s state and his past record, etc. is in the judge’s agenda to determine the best punishment. Hence the punishment of Mr. A and Mr. B, although both have committed the same crime, will not necessarily be the same in extent and type.”

Therefore, the judgment that should lead to the realization of the right is caught in the pivotal efficiency based on justifying the high number of cases, and it is increasingly moving away from its original principles.

## 2. Judgment Transformation<sup>3</sup>

One of the most important challenges of the application of managerialism in criminal justice, which has attracted the attention of thinkers and policymakers theoretically and practically, is how to balance managerial concerns and considerations of administering justice. As in recent decades, the concepts of saving, efficiency and effectiveness have dominated the criminal process, could one claim to redefine the main goal of the criminal justice system, namely the administration of justice? In other words, will the index of increasing efficiency in the criminal justice system that is always accompanied by increasing the speed of processing and hearing more criminal cases in a certain period of time with a lower cost, be in line with the goal of the criminal justice system, i.e. the administration of justice, or will may spoil it?

Although in a general perspective, increasing judicial improvement requires the proper use of resources and facilities and limited time to organize various criminal cases, the fundamental issue concerning the efficiency index of criminal justice reform programs is the issue of objectives of this system. Adhering to the traditional concept of justice, some theorists strongly believe in the contradictory between efficiency and justice, and thus severely criticize the teachings of managerialism; in this regard, some authors state that one of the potential harms of managerialism is serious damage to justice, interpreted as a kind of anti-justice. For the goals of efficiency and saving are in contradiction to essential justice (Moisidis, 2008: 86-95). Redefined the indicators of justice, others look at the managerialist model as an appropriate tool to achieve the ultimate goal of justice. For instance, Heydebrand and Seron described managerialism for intellectualizing justice through the managerial and economic principles in

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<sup>3</sup>. This means that the judgment deviates from its original principles and becomes formal. In other words, from the participants’ point of view, judgment no longer means the adjudication of the right, but is the removal of hostility in the shortest time.

administrating courts, instead of putting in the abstract and inaccessible concept of justice (Brown, 2014: 101-142).

The findings of this study show that the current policy of the Iranian criminal justice system regarding managerialism is not only far from the desired standards and conditions in this field, but also has the ability to strongly affect the nature of judgment; Because in the managerialist literature, judgment does not necessarily coincide with the discovery of the truth, but simply means the termination of the criminal case.

Additionally, analyzing the positions of the Iranian judiciary, documents, laws and procedures, indicates the existence of policies and programs based on increasing efficiency through time management. A large part of these policies is related to the control of variables leading to the prolongation of proceeding, and the other part is dedicated to determining the time frame of the case in criminal institutions. The general approach of these programs is the judges' commitment to quickly handling and hearing the incoming cases of criminal branches. Unjustified delay is attributed to other institutions and the executive process of the criminal justice system, in addition to the function of courts. Moreover, in the laws governing the organization of Iran's criminal justice system, there is no evidence of a fundamental change in judicial structures in order to expedite the proceeding of criminal cases (Ebadi, 2006: 32).

In such a model, agreement between parties and directing a case to the mechanisms of conciliation and mediation in forgivable crimes, filing or suspension of prosecution in the prosecutor's office and controlling judges and managers in a trial to expedite the final decision, are some measures that may be executed in order to reduce issuing sentences on the base of truth (Ghasemi Kahrizsangi and Farajiha, 2015: 50-52).

In this case, organizing the high rate of arrests, trials and convictions while available resources and facilities are limited, require prioritizing the patterns based on expedition and dismissal (termination). Expedition in proceedings, issuance and execution of sentences, leading practically to integration and reference to informal mechanisms. Termination is also accompanied by a reduction in annoying formalities and grounds for litigation and challenge to the litigants during the investigation, trial and sentencing. Therefore, the result of this model will be the preference of extra-judicial processes over judicial proceedings (Packer, 1964: 9-13).

As for crisis caused by vast cases, the Iranian criminal justice system found no way except prioritizing values such as expedition, resource management, and the increase of efficiency and productivity. The policymakers of the criminal justice system have chosen this priority while paying full attention to the irreconcilability of a trial based on truth, justice and fair, with a fast and low-cost trial based on managerialism. In order to increase the capacities of the criminal process to meet the existing needs, they have accepted and turned to the corrupt sequence of managerialism. Most likely, the outcome of this approach will not be pure legal scrutiny and recognizing right from wrong. The experiences by the United Kingdom and the United States, founders of criminal managerialism, also show that a balanced model of fair trial and managerialism cannot be fully performed. In these countries, the economic rationality governing the management of the criminal system and dealing with the crisis of legitimacy of this set, has created a significant obstacle to the dissemination and accurate evaluation of evidence (Ghasemi Kahrizsangi and Farajiha, 2015: 53).

This research, in line with the aforementioned theoretical issues, shows that the judiciary, due to the short time of trial and involving in the managerialism, has to prioritize the speed of trial, even if neglecting accuracy and justice. However, in his self-consciousness, he always hears the inside call: "What happened to the fair judgment?!" He sees himself as a professional man who must follow a series of formalities in the administrative hierarchy and, immediately after completing his duties, handles a case to continue its administrative proceeding. The words of the participant "Ch" is very remarkable: "Very soon we would not have a judge in its original meaning." This is one of the most important effects of managerialism in the Iranian judicial system. According to this participant, the fundamental deviation of judgment due to the policy of increasing efficiency, caused to rare fair and individualized judgments.



In addition to the comments of participants “T” and “Ch” about the effect of quantitativeism on the accuracy of the proceedings mentioned above, participant “H” also mentioned this effect, emphasizing the influence of quantitativeism on the spirit and resilience of judges. The participant “Kh” considered this effect even more important than other ones of quantitativeism, for he believed: “A judge who behaves people angrily arouses a sense of injustice in them.” He noted the prevalence of this morale among judges and added: “The impact of the workload caused by the vast numbers of cases on family life, nerves and spirit of judges is significant, so that if a credible scientific study is done, the result will reveal that most judges suffer mental problems.”

Judges’ deprivation from scholarly studies is another effect of the judiciary's quantitativeism, as contributed by participant “P”: “In fact, the large number of clients and cases has deprived judges from many scientific studies, and so they often have a little time to study. On the other, the laws are changing frequently, so many judges are unaware of the innovations and changes in new laws. I have seen cases that, several years after the implementation of the New Penal Code, the judge was still unaware of some of the emerging institutions of this law.”

Thus, according to participants, the managerialism of the criminal justice system and the emphasis on quantitativeism have reduced the accuracy of trials, increased judicial errors, reduced the judges’ resilience, put stressful in judges and kept them away from scientific studies. It Institutionalized the outcome of cases and the positive statistics of the proceedings in many judges, instead of litigation and execution of justice. As a result, a judge who must judge fairly, in a reasonable time, on the basis of diligence and patience, and sentence after the satisfaction of conscience, increases the speed and extent of his proceedings to be considered among good judges. However, he is always dissatisfied with this procedure in himself and feels that he has been reduced to an expert in the criminal justice cycle.

Every effect, while may increase the prison population, generally led to a transformation of judgment. According to this metamorphosis, judgment no longer means the adjudication of rights and the administration of justice, but rather means the termination of the case as soon as possible. According to the participants, the outcome of this situation will be “Judicial incarceration”, a consequence that has been brought about by pivotal efficiency and judgment transformation.

### 3. Judicial Incarceration

Participants argued that the pivotal efficiency of the criminal justice system and, consequently, the transformation of judiciary made the prosecution by judges more like an ideal than a reality; Because the real product of such an approach would be Judicial incarceration and the increasing prison population. A judge who is institutionalized by criminal managerialism and faces with the transformation of judgment, is forced to choose either resigning from the judiciary or accepting the facts of the judiciary. Almost all participants believed that the aforementioned conditions in the criminal justice system make the judge more inclined to imprisonment as a choice between alternative punishments and imprisonment. This means the judicial basis that generates imprisonment, referred to as “Judicial incarceration” in this study. According to the participants, the limited time of the trial, the quantitativeism, and the difficulty of obtaining alternative sentencing conditions are incarcerating realities in the judiciary that reinforce judges’ willingness to choose imprisonment. As told the participant “D”:

“In order to issue alternatives for imprisonment, it is necessary to meet the conditions, which takes long time, and because of the quantitativeism and the vast number of cases, the judge with a short time fears of neglecting a legal condition due to these problems, so he ignores the issuance of these punishments; In other word, when the disciplinary court examines the case, if one of the legal cases is omitted, it is considered as a violation committed by the judge. This is a heavy burden on judges’ shoulder, so they issue imprisonment and eliminate the risk of alternatives or postponement of sentencing.”

According to the participant “Z” also: “In order to issue alternatives for imprisonment, it is necessary to meet the conditions. As the conditions are difficult to be met, many judges do not enter these punishments and prefer imprisonment instead.”

Participants’ answers show that the incarceration resulting from the managerialism of the judiciary is not limited to judges of the court, but in the view of the executing judges also the imprisonment is more acceptable than alternative punishments; The participant “R” said:

“Judges of executing sentences mostly do not agree with alternative punishments; Because the number of cases is vast in itself. Suppose that the judge should sentence social punishments. Then the executing judge should take turns in these cases once a month and examine the situation of the execution of the punishment. This takes a lot of work pressure. Therefore, it is natural that he prefers a judge who does not issue a social punishment and so it reduces his work. Accordingly, in the view of executing judges, imprisonment is better because it takes less work.”

Introducing one of the most important reasons for tendency to imprisonment from the executing judges, the participant “H” pointed also to the increasing efficiency as a criterion of selecting the best judge and paying overtime to him:

“Judges of executing sentences mostly are more inclined to imprisonment. One of its reasons is the quantitativeism; One of the criteria for paying overtime and selecting the sample judge is the statistics of a judge’s output. As a result, because alternatives to imprisonment take long time, executing judges are more interested in prison sentences.”

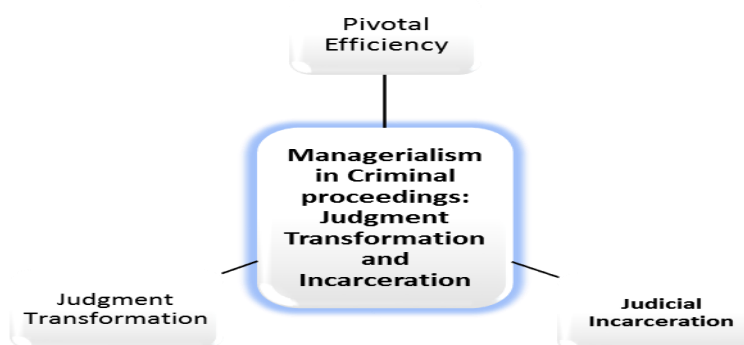
Commenting on how overtime is calculated based on the court branch’s output, this participant said:

“For overwork judges, the IT unit has a list of court branch’s outputs and various judicial authorities. It first allocates a minimum output to pay overtime and then will pay to judges whose output exceeds the specified minimum. These judges of course do not receive overtime equally, but rather the outputs above the minimum are leveled in a gradual manner, the amount of which will vary according to each level.”

Therefore, according to participants’ opinions, managerialism created a transformation in judiciary that motivated judges to accept imprisonment eagerly. It was due to the short limited time for proceeding and the low risk of the prison sentence.

### **Conclusion**

The result of data analysis is three main categories (pivotal efficiency, transformation of judgment, judicial incarceration) and one core category (managerialism in criminal proceedings: judgment transformation and incarceration tendency of judges). Figure 2 illustrates the grounded theory of this paper.



**Figure (2): “Core category and research’s grounded theory”**

According to the participants, managerialism (with increasing efficiency index) has transformed judgment through reducing the accuracy of trials, increasing judicial errors, reducing the judges' resilience, making judgment stressful and keeping judges away from scientific studies. Accordingly, judgment no longer means the adjudication of right and the administration of justice, but rather the termination of the case as soon as possible. This policy has led judges to have less time for hearing cases, and because in these situations the issuance of alternatives to imprisonment have high risk, they prefer sentences leading to imprisonment to other judicial sentences.

Therefore, from the participants' point of view, pivotal efficiency has led to judicial incarceration. That is, the conditions and effects that managerialism has institutionalized in the judiciary have led to increasing issuance of imprisonment punishment by judges. In other words, criminal managerialism has made the judge more inclined to imprisonment as a choice between alternative punishments and imprisonment. In this case, if a judge wants to put imprisonment aside in his opinion, he must bear the consequences; for it takes a long time to qualify for many detention facilities (especially alternatives to imprisonment), that certainly leads to a less statistics of his hearings. With the negative statistics of the proceedings, he will lose one of the most important criteria for selecting the example judge in the judiciary. It is as if the managerialism of the judiciary inevitably forces the judge to issue imprisonment punishment. Therefore, a judge who must act fairly and patiently at a reasonable time and sentence after being satisfied with his conscience, finds himself caught in the judicial system's quantitativeism and, despite his inner desire and remorse, he frequently expedites his hearings in order to be selected as a good and efficient judge in the judiciary.

Findings indicate that although the application of criminal managerialist policy for solving the problem of vast numbers of cases in a short term brings a temporary efficient, most likely, its long-term effect will be nothing but an increase in the prison population and public distrust of the judiciary.

### ***Suggestions***

1) Judicial cases must be processed within a reasonable time. Reasonable time means spending a normal time to process a case in which three criteria of objective (determining a time limit in the law), subjective (situation of each case) and intermediate (a combination of both subjective and objective criteria) have been introduced as a criterion for recognizing it. The procedure of the European Court of Human Rights and the International Criminal Court, based on part c of paragraph 1, Article 67 of the Statute of the International Criminal Court and Article 6 of the European Convention on Human Rights, while making the intermediate as the criterion of reasonable time limit, may be a good pattern for identifying indicators of reasonable time in criminal proceedings.

2) Criminal cases are so diverse that certainly a criminal court cannot deal with all crimes with the desired professional quality. As different scientific trends are specializing rapidly and strongly, similarly is the criminal and criminology discipline which is composed of different specializations and requires various studies. In such situation, the specialization of the courts may greatly aid the quality of the sentences and the adjudication of a fair trial.

3) The judges executing the sentences related to social punishments, on the one hand, must be trained and have the necessary expertise, and on the other, must be able to directly intervene the amount of punishments. Obviously, this intervention will be based on conditions that the legislature anticipated before. However, in general, in Iran, the executors of sentences do not have a distinct expertise compared to other judicial personnel and also have limited powers of flexibility in the execution process. Therefore, since the prerequisite for the success of social punishments is the possibility of interference in them by the executing body, ignoring it will be one of the obvious obstacles to achieving the goals of punishments, especially amend and rehabilitation.

4) Through an expert review and getting the opinions of experts and experienced people, it is possible to act in such a way that while observing the expedition of criminal proceedings, a fair trial is

also obtained. It is necessary that the economic rationality governing the management of the criminal system and dealing with the crisis of legitimacy of this group through managerialism, must be replaced by designing and pursuing policies that balance the values of fair trial and efficiency. In this regard, accurate, clear and executive timetables may be set for all stages of criminal proceedings, and instead of forcing judges to quick hearing the incoming cases of criminal branches, the causes of unjustified delays in criminal proceedings could be identified and eliminated.

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