

Judicial Security and Its Components in the Iranian Criminal Law and European Court of Human Rights Jurisprudence

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ABSTRACT

Judicial security of citizens is one of the sights of "security" that has provoked many sensitivities and is a subject of fundamental challenges. The importance and sensitivity of Judicial security mainly has been consequences of the international human rights instruments, which has led to establishing the parties rights in criminal proceedings from the beginning to the end of the procedure as a matter of human rights and so states are obliged to respect and ensure its implementation. Judicial security is proper, timely and unbiased functioning of the judicial system to achieve the objectives defined for the system and to make public confidence to its proper function. Implementation of this aspect of security requires respecting some principles in the organization of the procedure and hearing process. The most important mentioned principles include: the rule of law, the rule of judicial administration of states, presumption of innocence, the prohibition of torture and inhuman treatments, prohibition of discrimination etc. One of the most advanced and influential human rights treaties in this field is European Convention on human rights that its progressive principles are manifested in views and verdicts of European court of human rights. ECHR had played an important role in modifying the rules of procedure of states parties. In this paper, while reviewing the concept of judicial security and its basis, also the principles of European Convention on Human Rights and Iranian criminal law which guarantee such security will be examined.

KEYWORDS: judicial security, fair trial, judicial independence, criminal procedure

1. INTRODUCTION

Security as one of the basic needs of human beings such as food and clothing has been addressed and providing that in many aspects, is the duty of the government. Today, having security is one of the most prominent civil rights and citizenship, and governments are responsible to ensure this right.

With the advent of the states, communities have found that in order to maintain order in society, not only the existence of a higher power that is beyond the power of people is essential, but judgment and arbitration between the people and the tribes would also be responsibilities of this dominant power.

Affected by the crime recognize this ability in implementation of the decisions they make and so they refer to such institution for settlement of their disputes. Over the times and the enhancement of power of the states, settlement of disputes and criminal proceedings were under the jurisdiction of the states. This public organ considered commitment of any crime as a breach to public order, hence crimes found a public aspect.

Gradually and with systematization of the judicial process and the creation of a special organization of the proceedings, the rights of the accused and affected peoples has been considered.

Attention to concepts such as justice, the balance of crime and punishment, avoiding oppression and dictatorship and similar notions, led to a systematization of procedure rules and written into the laws and regulations in the title of proceedings codes. The proceeding judges were obliged to obey these proceedings codes and they were not allowed anymore to make a decision for or against one of the parties beyond their competencies.

Naturally, these rules always should be criticized as a matter of the fairness.

With the development of criminology and adjustment vindictive and revengeful views of the accused, opinions that marked the rights of the accused in the trial process were considered more.

In light of such progress, which was in grace of international instruments, especially the Universal Declaration of Human Rights, Respect to the rights of the parties as a matter of "human rights" was noted and states are obliged to observe and ensure the implementation of these rights.

Respecting the mentioned law creates a kind of social security that is called "legal protection".

Iran's constitution in Article 3 (14) for safeguarding the rights of individuals and providing a comprehensive and fair legal protection for all indicated that this security is one of the duties of sovereignty.

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"In order to attain the objectives specified in Article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

14. Securing the multifarious rights of all citizens, both women and men, and providing judicial security for all, as well as the equality of all before the law"

Obviously implementation of this protection is not simply the duty of the judiciary, and generally refers to the all 3 important powers of legislature, executive and judiciary.

Legislature as the sole competent authority in legislation and regulations not only has duty to uphold and respect the fundamental rights but is required to adopt practical guidelines for implementations of these rights for other bodies.

Although the European Convention on Human Rights is the first international instrument that has been developed in the field of human rights, but this is the first document human rights convention that has anticipated a judicial body to monitor and control the execution process of an international treaty.

At the convention, a dozen cases of human rights and freedoms are taken into consideration include: prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the right to liberty and security of individuals (Article 5) , the right to a fair trial (Article 6).

This paper tries to demonstrate the judicial security of citizens which is recognized in the Convention or its additional protocols and is related to mentioned rights and liberties in the convention. Rules of criminal procedure are not sufficient unless it holds a balance between the rights of the affected society and the right of accused.

Nowadays the rules of criminal procedure in many countries are in the process of modification and essential reforms. These reforms mainly concern the principles governing the procedure and rights of the accused.

THE CONCEPT AND PRINCIPALS OF THE JUDICIAL SECURITY

Security means freedom, peace, lack of fear and invasion. (Moein, M., 2009, P.354) In the field of behavioral sciences two meanings has been indicated for security, first, to satisfy the needs and demands and secondly the feeling of personal worth, confidence, self-esteem and the social acceptance. (ShoariNejad, A.A., 1985, P.417)

Security is also expressed in the definition of the term as: "assurance that makes people to be sure and comfortable about their life, property, reputation, job, house, and private residences. (Hashemi, M., 2005, P.36)

Some believes security as one of the core and fundamental issues of human rights, alongside with the individual and group freedom (Hashemi, M., 2005, P.36) and others categorize security as "The freedom individual operation"(Ghazi, A. 1994, P.156)

Security as a public asset, not only it's the government's responsibility to provide it, but the demand for security, require active intervention of public power. As one of the requirements of human development, security for all citizens, regardless of status or wealth should be provided. (Goold and Zender 2006, P. 408)

Ultimate goal of Independent judiciary in the country is judicial security.

The existence of judicial security is necessary for the development of different aspects of cultural, economic and political issues. Until the people of the community could not trust and have enough faith to a reasonable guarantee of their human, economic and cultural rights, they will not be interested in having an active participation in social, economic and political fate.

Providing judicial security, not only is important in a domestic domain, but also in an international dimension will be shown as respect for the sovereignty from other nations. The judicial security is one of principles the public law.

The root of the original features of such principle is from characteristics of each legal system that today's are integral components of that system.

Stability of the legal system, ensuring permanent protection of individual rights and create confidence in the legal system, the most important of these characteristics are considered. For this reason, in many legal systems this essential principle has been indicated in the constitution.

In fact, the principle of judicial security as one of the most important indicators of the law has been considered and its assurance is the ultimate goal of each legal system. On the other hand, many legal institutions are justified by the principle of judicial security. This dual function of this principle gives even greater importance. Stability of the legal system will lead inevitably to the stability of legal relations which will affect economic and social security and eventually lead to deep social and economic improvements (Vizheh, M.R., 2008, P. 183).

Judicial security, in a special context, will make peace of mind and assurance in a practical and theoretical point of view that non individual or entity with no reason and arbitrary be prosecuted under the law and If anyone for any reason, as the plaintiff or the plaintiff or the defendant or third party be involved in a hearing or any judicial process, the existence mechanisms could ensure fairness and justice and the various

dimensions of human dignity, such as life, liberty, privacy, intellectual and emotional security, financial, employment, and housing to protect them from injustice.

Based on one of the most complete legal definitions, judicial security is "a correct on time and without prejudice operation of the judicial system to achieve the defined objectives and public confidence." The first part of the definition refers to the "objective aspect" of judicial security. The second part of the definition refers to the "subjective aspect" of judicial security. (Alinaqi, A.J. 2000, P.10)

In Islam, the "security" is one of the essential needs and requirements of the society. In the history of human's political and legal thoughts, this concept in general has been taken into consideration. Hence judicial security has a dual function, from one side it refers to the duties of government for the "nation" and believes the state should establish judicial security as one of the features of the overall security of the society so citizens could benefit from a fair judgment and justice in the judicial proceedings, and on the other hand, citizens need to be protected from measures outside the law. (Eshraghi, H.R., 2007, P.66)

A judicial system must be based on truth, justice and safety to the public and provide real justice. The Holy Quran In this context likened the rights of people to trusts that judges should restore them to the people, it says: "Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice." (Akhavan Kazemi, B., 2007, P. 75)

In light of the judicial security, individuals are authorized to exercise their activities and their lives, property, honor and dignity are protected and no one can harm them. So the judicial security protect people from any aggression, such as murder, assault, wounding, imprisonment, mental and physical torture and other penalties and any action that is incompatible with human dignity, such as prostitution and exploitation, which does not matches the logical and legal norms.

According to Iran's constitution, judiciary judicial system is the responsible for implementation of judicial security and social justice. (Alinaqi, A.J. 2000, P.10) As mentioned Article 3 (14) of constitution provide:

"Securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law"

In this regard Article 156 (2) also indicates:

"The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice, and entrusted with the following duties: ... 2. Restoring public rights and promoting justice and legitimate freedoms; "

GUARANTEES OF THE JUDICIAL SECURITY

For providing judicial security for all people, it is necessary to establish some general and specific guarantees. At a general level, these guarantees are related to legal and political structure of the country.

So the fairness of the legal and judicial system of a country is a factor for ensuring the judicial security. At a certain level, arises criminal justice and assurance of a fair hearing.

GENERAL GUARANTEES OF JUDICIAL SECURITY

1- THE RULE OF LAW

Rule of law is commitment to learn and apply the law equally to all members of the political community. However the rule of law does not require respecting the principles of justice and in some cases conflicts may arise. (Adyani, Y., 2012, P. 245)

During the initiation and continuation of a procedure which may is the most visible and important symbol of the rule of law in a society, the judge is not in a place of legislator and should exercise the law. So the judge must mention in its verdict the law so the parties and higher authorities understand its legal legitimacy and also remind the judge that is not completely free in issuing verdict.

Mentioning the law in verdict is an important guarantee for the rights and authority of the law in courts, and because of its importance the constitution of Iran also indicated in Article 166 that:

"The verdicts of courts must be well reasoned out and documented with reference to the articles and principles of the law in accordance with which they are delivered."

Sentencing the judge and Enforcement of this obligation, (Article 15 (1) Supervising on the practice and conduct of judges Act 2011), and Invalidating the verdict in the above the Supreme Court are enforcement rules of this obligation. (Katuzian, N., 2001, P. 154) Iran's constitution predicted that judicial security must be in the rule of law so any pressure and act against individuals must be in the framework of law. (RahbarFarshPira, N., 2006, P. 4)

2. THE RULE OF JUDICIAL ADMINISTRATION

Establishing security and peace in society by bringing offenders to justice and educational or safeguarding measures are supposed to be the responsibilities of the government in a criminal justice system. (Ashuri, M., 2006, P. 5)

However the offender after the initial stages of the criminal process must only be examined and sentenced by the court. In other words, between crime and punishment, there is the court hearing that starts to proceed by complaining on behalf of the community in the prosecutor office.

In all states, the mission of securing the public safety of the citizens is the duty of a system and process that is called "criminal justice system". The system is composed of the Subsidiaries and different agencies that together are responsible for the security and to combat crime.

Judicial proceedings and issuing verdict can be defined as: "The review and assessment of the behavior attributed to the individuals based on laws and legal standards and establish a binding verdict of non-attribution to the behavior of the defendant, or charged with, or lack of conflict its behavior to laws and legal standards (presumption of innocence, refused to proceed), or conflict with the law and sentenced and to compensate (the impact of the law) or endure punishment." (Fazaeli, M., 2010, P.45)

Necessary of protecting the rights and freedoms of citizens, respect for public order and prevent chaos and create security in society, makes clear the importance of having a government agency for jurisdiction.

Hence Iran's constitution has mentioned several times the duty of the judiciary as the only source of discovering and dealing with the crime and to punish offenders and it has been banned any arbitrary action by individuals and informal groups.

European Convention on the Protection of Human Rights and Fundamental Freedoms has developed the right of accessing to trial, beyond of the internal borders. According to one of additional Protocols to the Convention, all member states of the European Court of Human Rights (ECHR) can complain against their governments.

There are a set of rules and principles for crime detection, prosecution and trial of accused, authorities, through ordinary and extraordinary appeals and also the process which judicial authorities handle the investigation of the criminal trial and the execution of verdicts with maintaining the rights of the accused. These are Procedural regulations. It supports the principles of the Universal Declaration of Human Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms rights that has been mentioned in national constitutions. (TaHERi, M.A., 2004, P.41)

In this regards, in the courts particularly the principles of fair trial must be respected. These principles protect the rights of individuals against oppression and aggression and ignoring and provide the right to a fair trial for them.

3. THE AVAILABILITY OF COURTS

Access to the court for the whole population in a society is one of the most urgent needs of judicial security. This access when is related to physical access is clear. However the spiritual aspect of access to the courts is as important as physical access.

The parties to the case in whether criminal, civil or administrative courts expect to have opportunity to speak and to be heard, regardless of whether the court is required to listen to what they want to say or not, as the Court usually at their best situations just hear "what they think it is necessary to hear," everyone can't listen to all parties' defends therefore concluded that the statements of the complainant or the complaint has not been heard properly. (Strategic Research Center, 2011, P.71)

Access to court to seek justice and for the rights that has been violated, is recognized in international human rights instruments. Article 10 of the Universal Declaration of Human Rights provides:

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

The same concept exists in the first paragraph of Article 14 (1) of the Covenant on Civil and Political Rights as well.

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

Article 34 of the Iran's constitution stated that:

"It is the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have right of access to such courts, and no one can be barred from courts to which he has a legal right of recourse."

According to this principle, the establishment of appropriate and accessible justice system that guarantee the judicial security of citizens is the obligation of government and this is an absolute right and cannot be denied.

Although in article 6 of the European Convention on Human Rights there is not a clear reference to the right. However, with regard to the provisions of this Article and the importance of having access to justice, courts and judges to apply other safeguards in the proceeding, the existence of such a right simply confirm.

Accordingly, the European Court of Human Rights (Decision dated February 21, 1975 at Gelder VS England Case), the existence of all guarantees envisaged in Article 6 requires an appropriate hearing in court.

States Parties are obliged to make arrangements to provide for the enjoyment of such right.

These arrangements have two physical and legal dimensions. As a physical point of view, facilities such as the right to be accompanied by a lawyer and an interpreter (systematically in criminal cases with respect to paragraph 3 of Article 6) have been mentioned. For example, preventing a prisoner from consulting with an attorney to protest the behavior of the prison guards has been considered as a physical barrier to access to court.

Similarly, as a legal point of view, regulatory provisions of the Member States should not be in a way that is obstacle to the enjoyment of these rights by the accused or because of some vague regulation, the accused be deprived from having a fair trial.

From the perspective of ECHR, The title of judicial system as commission, council, court or tribunal, necessarily has not any effect on the concepts that has been provided by the Article 6 and all be considered as the "court" in the meaning of this article. In fact, the criterion of Article 6 is exerted on the handle of an organ, its function and role of the judiciary.

In addition, this article provides legitimacy of establishing such institution and being judicial or non-judicial determined by legislator does not affect its function in nature.

In fact the non-recognition of authority for an entity (with the nature of the judicial function) as a court by the legislator will not eradicate its judicial nature. Similarly, the simultaneous presence of other competent judicial authority (e.g. administrative) and sub-judicial function other than the functions of an institution, not only wont exempt it from the provisions of Article 6, but if it leads to non-compliance with the procedural safeguards (such as independence and neutrality) in the exercise of its jurisdiction, it would be regarded as a breach of the mentioned guarantees.

It is worth noting that, protest against the decision of a judicial authority (the principle of two-stages proceedings with a possibility of appeal verdict) has not anticipated in Article 6 and just about the decisions of the criminal authorities (on the basis of Article 2 of the Additional Protocol no.7) requires two- stages investigation.

But according to the precedent and the existence of two-stage procedure in most legal systems, it seem that the requirements relating to the right of access to the courts, should be exist also in the stage of appeal.

In other words, by anticipating the possibility of revising in the internal system, states parties are required to provide the above mentioned regulations for the court of appeals as well.

In addition to what is stated in Article 6, Article 13 of the Convention provides the right to appeal decisions of the national authorities of violations of the rights recognized in the Convention. According to the article:

"Everyone whose recognized rights In the Convention has been violated, even if the violations committed by the official authorities, has the right of appeal to a national authority."

4. INDEPENDENCE OF THE JUDICIARY

Mere access to court proceedings and a reference to litigation cannot guarantee a fair hearing to the plaintiff's claim and only in the shadow of independence and impartiality of the investigative court that can be established.

Judicial independence is one of the principles which without it the proper administration of justice is not possible, this principle means freedom of judges from interference and influence of the authorities that has been recognized in the Islamic texts and international instruments and the different legal systems of the world. Assurance of fair juridical security requires independence of the judiciary and independent judges. So judges solely based on the law and their conscience away from any influence or pressure to the outer and inner issue their verdicts.

Not only respect the independence of the judiciary ensures a fair trial in the office of prosecutor of, but the fair trial depends on it. So the accused would be able to deny the reasons and evidence gathered by the other party (the prosecutor) and challenges its accuracy. At this point, the accused and the victim benefit from some rights that is crucial for them because in this phase the accused may be convicted or be released. So if, in the process, the principles of fair trial be respected, its outcomes - conviction or release – would be in compliance with judicial security. (Ranjbaran, Q., 2012, P.199)

Article 57 of the constitution provides the independence of the judiciary and prohibits the influence of other authorities on the judiciary:

"The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute religious Leader and the Leadership of the nation, in accordance with the forthcoming articles of this Constitution. These powers are independent of each other."

For this independence the judge should be provided with security and personal protection, so with no concern could be able issue fair verdict. In this regard, Article 164 of the constitution, Dismissal of judges

without trial or proof of his guilt, or transferred without the consent of the judges is prohibited unless as a matter of the interest of society. This article states:

“A judge cannot be removed, whether temporarily or permanently, from the post he occupies except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A judge cannot be transferred or redesigned without his consent, except in cases when the interest of society necessitates it, that too, with the decision of the head of the judiciary branch after consultation with the chief of the Supreme Court and the Prosecutor General. The periodic transfer and rotation of judges will be in accordance with general regulations to be laid down by law.”

To achieve this independence, in addition to the need for an independent judiciary, personal independence of judges from any improper influence and internal and external control and guidance is necessary as well. So the independence of the judiciary possesses two aspects: the independence in judicial decision making and organizational independence. (Habib Zadeh, M.J., and others, 2010, P.14)

However, in many cases of Iran judiciary, a clear violation of the rights of self and personal independence of judges and judicial intervention in decision-making exist. Binding verdicts of Supreme Court and precedent are examples of these independency and judicial intervention. In the same way, directives of the former head of Iran's judiciary, which in many cases violate the independence of judges, are clear interference in judicial decision making by judges.

Independence of the judiciary or in other words, the right to be tried by an independent and impartial court, has been mentioned in the majority of the provisions of international instruments on human rights.

Including the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention on Human Rights and the UN Principles and the Independence of the Judiciary has become so important that is one of the most fundamental guaranteed rights. According to the ECHR, in order to determine the "independency" of a judicial board shall consider such aspects as: "the appointment of its members and their length of service, the existence of guarantees against outside pressures and this question whether the board appears to be independent or not."

Human Rights Committee in its General opinion No. 13 dated 12 April 1984 has adopted a similar conclusion in relation to Article 14 and has declared that the states are obligated to take appropriate measures for adopting laws that is in relation with independence and impartiality of concerned courts and they shall ensure this independence and impartiality specially for the appointment of judges and length of service, conditions of promotion, transfer, suspension of duties and independence of the judiciary from the executive power.

In general, judicial independence is necessary to make sure that the judges of the judicial system are free from outside influences exertion and are orders of their superiors and the judicial authorities. The lack of both mentioned pressure and interference, guarantees the independency of judges. (Ranjbaran, Q., 2012, P.35)

In addition, there should be some measurements for performing court's tasks independently specially for the appointment and dismissal of judges. In this context, ECHR support the idea that personal appointments of someone by the political powers could not lead to the judiciary's independence as long as the authority could not dismiss the judge on unfair grounds. Therefore, it is important to determine in each case whether the conditions for the appointment, length of service and the conditions governing promotion, transfer and cessation of duties, make this possibility that the performance of judicial duties freely or not? For example, in a case where judges which were elected by the Parliament of Denmark, as well as some of the Supreme Court were nominated to attend the Council,

ECHR stated that impossibility of dismissal of judges by the executive power during their service shall be the general requirements of their independence and be included in paragraph 1 of Article 6.

Also, ECHR on several occasions declared that the Turkish security courts and military courts of England have violated the provisions of paragraph 1 of Article 6 of the Convention. In the case of such courts in Turkey, ECHR commented that presence of a military judge in a security a court can lead to unnecessary influence on the court with unrelated considerations to the nature of the case and so the accuse fears of its legitimacy (Verdict dated June 9, 1998, *Ebtelal V. Turkey* and Verdict dated 29 October 1998, *Syraklar V. Turkey*). Accordingly, the Turkish Parliament has amended Article 143 of its Constitution on 18 June 1999 and thereby replaced military judges with civilian judges, in the security courts.

SPECIAL SAFEGUARDS OF JUDICIAL SECURITY

Judicial security is a product of courts and judicial authorities' performance in a way that respect rights and freedoms of individuals and human dignity.

This is very important in criminal cases which are dealing with lives and freedoms of people.

Criminal justice system should behave as though that alongside of the prosecution and punishment of real criminals, the court be able to respect dignity of those who are in the cycle of criminal justice, including the accused and plaintiff.

This matter is more sensitive in relation to a person who has been charged for a crime as everything in the process is against him or her.

The judiciary system is against the accused, so he or she should be protected.

In order to establish judicial security for citizens in the face of the criminal justice system and the protecting their rights and freedoms which are based on human rights, measurements has intended by the constitution and laws and several regulations.

One of the principles and rules that are based on criminal law and is considered a measure of justice is the presumption of innocence.

Based on this principle which has been predicted in international law and domestic law, especially criminal law and the constitution, every person is presumed innocent and if the guilt has to be proved.

However, in certain cases this principle of assumption can be replaced by special rules.

Nowadays, the criminal law and criminal procedure, are under the influence of public law and authorities especially prosecutor in the process of criminal prosecution, have great power against the accused with special forces while the accused is not entitled to any of these facilities and therefore, justice is in need of applying the presumption of innocence in criminal law.

The principle of presumption of innocence enjoys a special place in international instruments, domestic legislation and judicial practices in different countries.

Islamic Declaration of Human Rights from of the Islamic Conference Organization, the United Nations Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966 and the Statute of the International Criminal Court 1988 are all obsessed with a particular emphasis on this principal.

Pursuant to Article 14 (2) of the International Covenant on Civil and Political Rights and Article 6 (2) of the European Convention on Human Rights:

"Everyone who is charged with a crime as long as his guilt has not been proven in favor of the law shall be presumed not guilty."

Generally, the effects of respecting to the principle of presumption of innocence in a legal system for suspects and accused are as follows:

In Iran law, Article 37 of the constitution, Article 1257 of the Civil Code and Article 197 of Iran's civil codes of Procedure for the Public and Revolutionary Courts have emphasis on this principle. However, two recent article regarding the presumption of innocence in civil matters, but in terms of base, are similar with the presumption of innocence in criminal matters and of course, the presumption of innocence has priority in criminal matters more than civil matters. Article 37 of the constitution states that:

"Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court."

The principle of presumption of innocence has been considered as the common heritage of all the nations of the world's progressive in their domestic legislation and the international law.

Interpretation of the doubt in favor of the accused, banning applying force accused to prove his innocence and prohibiting the broad interpretation of criminal law are some effects of this principle.

Article 6 (2) of the European Convention on Human Rights states that any person who has committed a crime, until the charge has not been proven according to law shall be based on the legal presumption of innocence, be considered not guilty. ECHR indicated that: *"presumption of innocence requires that the court should look to the one charged with the assumption that he has not committed an offense and so the burden of proof is on the prosecution and any doubt should be interpreted in favor of the accused."*

Therefore the court could not use any evidence that has been provided in the preliminary stages of investigation by using force and bad behavior and if it does, the court violates this principle.

Similarly, in cases where prosecutors and witnesses' statements make an uncomfortable atmosphere in the hearing without proper response of the president of the court, it could be considered that the court believed in criminality from the beginning. According to ECHR, misbehavior with the accused during the proceedings is an example of violations Article 6(2) and Article 14 (2) of the Convention. (Omid, J. 2000, P.171.)

2. PROHIBITING ASSAULT ON INDIVIDUAL LIBERTY

The right to liberty and personal security means that no person can be deprived of his liberty except by order of the competent authorities on the legal ground and with respect to the legal regulations has been predicted in favor of freedom of citizens. According to Article 32 of the constitution:

"No one may be arrested except by the order and in accordance with the procedure laid down by law."

Similarly, Article 9 of the Universal Declaration of Human Rights considered that: "No one shall be arbitrary arrested or detained."

Also pursuant to Article 9 (1) of the Covenant on Civil and Political Rights:

"Everyone has the right of liberty and personal security. No one may be arbitrarily arrested and detained. No one shall be deprived of his liberty except according to procedure established by law."

Iran's criminal codes of Procedure for the Public and Revolutionary Courts have predicted certain measurements for the arrest and detention of persons.

Article 5 (1) European Convention on Human Rights, recognized liberty and personal security as inalienable rights of individuals and states:

"Everyone has the right of liberty and personal security. No one shall be deprived of its own liberty. "

Preventing the states from restricting individual liberty arbitrary and illegally, is the main purpose of this article. ECHR which has established by the States Parties for ensure respecting obligations contained in Convention (Article 19) always issues verdict in related cases of liberty violation. So when ECHR receives a claim with the subject of liberty violation or personal security, the Court addresses the issue, for example in the ground of illegal punishment to the individual as a breach of mentioned provisions.

Examples of violations of liberty and personal security could be mentioned such as the lack of recording time, duration and place of arrest, detention characteristics and reasons for punishment or imprisonment.

3. EXPLAINING THE CHARGE WITHOUT DELAY

Explaining the charge to the accused is prior to the beginning of the interrogation and is the starting point for the rights of defense in criminal proceedings. In paragraph 3 of Article 9 of the Covenant on Civil and Political Rights states:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment."

Part III of Article 32 of the constitution provides:

"...and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible."

Article 32 of the constitution also indicated immediately informing of the charges:

"In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing..."

In accordance with Article 127 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts:

"The judge is bound to start the investigations immediately after the accused appears or is arrested. If this is not possible, the investigation should start no later than within 24 hours of this time. Otherwise the detention is considered illegal, and the arrestee is convicted of the specified legal punishment."

In the new Criminal Codes of Procedure Act, 2013, Article 195 states:

"The magistrate before the start of the examination with regard to the rights of the accused, he shall inform the accused to be careful about his own statement. Then explain clearly the charges and evidence to him. The accused should be informed that in case of confess or effective cooperation, the punishment will be alleviated, and then he starts to ask questions. Questions should be useful, clear, and in its related charge..."

Article 6 (3) European Convention on Human Rights emphasis on the need of accused for understanding the charge in details:

"Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;"

4. THE RIGHT OF DEFENSE BY ATTORNEY

The right to legal defense is one of topics of judicial security. In fact, the right to defend is one of guarantees for citizens in a base of judicial security that can be used in case of violation of their rights. Article 35 of the constitution affirms the right to choose an attorney:

"Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel."

Therefore, the related procedure of selecting an attorney has been indicated in Articles 185 to 187 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts. Illustrating the right of defense in the constitution means this right is essential for citizens and shall be respected.

Article 346 of the new Criminal Codes of Procedure Act, 2013 also states that, both parties may present their lawyers or attorneys in all criminal matters. Article 347 also recognized the right for the accused to ask for an attorney by the end of first hearing. If the accused couldn't pay for an attorney the court shall appoint an

attorney between the lawyers of its jurisdiction of if that's not possible from the nearest jurisdiction. Article 348 states a hearing will not be formed without the presence of his lawyer in the crimes of Article (302) (a), (b), (c) and (d). If the accused does not introduce his attorney or his attorney does not present in the hearing without any acceptable excuse the court must appoint Public Defender and if this new lawyer without any acceptable excuse does not present at the hearing, the court would dismiss him, and appoint another Public Defender. Article 14 of the Covenant on Civil and Political Rights states:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;"

Article 6 (3) (c) of the European Convention on Human Rights has identified and confirmed the right to counsel and enjoying attorney.

Pursuant to this paragraph:

"Everyone charged with a criminal offence has the following minimum rights: to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

Obviously the main purposes of Article 6 of the Convention, as far as criminal matters are concerned, is assurance of a fair trial by a competent court to address any criminal charges. However, that does not mean this right does not apply pre-trial stage and the right to a fair trial sufficiently remain practical and effective.

Article 6 of the [Convention] requires that, as a rule, since the initial questioning of a suspect by the police, accessing to legal counsel be possible unless in some particular circumstances with reasonable excuses. Even where these reasonable reasons, deprive the accused to have access to attorney, such restrictions should not harm the rights of the accused under Article 6. This violation to the rights of accused could happen when his statements with absent of an attorney in initial examination use against him in the court.

5. PUBLIC HEARING

The public hearing means the absence any barriers to the participation of the media in publishing the proceedings of the trial with respecting the rights of the accused and the victim. Also public hearing means that in addition of both parties in legal proceedings, the public also have a right to attend the hearing.

Citizens have Right to know how verdict will be issued in the judicial system and how justice is administered. Public hearing address fundamental guarantees for fairness and independence of the judicial process and is a supporting tool for public confidence to the judicial system.

However, Iranian legislators have limited the implementation of this principle according to some circumstances and its enforcement has been left unresolved. Criminal justice is the purpose of criminal proceedings and it won't be achieved without establishing a fair trial with respecting the rights and freedoms of the accused, the victim and other people involved in the criminal, though public hearing is a measure of a fair trial. (Rezaei, A., 2012, P.1)

ECHR believes that when public hearing could be established that the Court analyze related matters with a possibility of public attendance. However, in cases where there is no general prohibition and all people will be allowed to enter the court, the trial is a public hearing. But if the trial is held in a private situation, without any doubt, one of the accused's defenses and the right of citizens for attending to the court has been violated, even if the proceedings judge has announced in advance that a public hearing will address the issue.

Another important point is that although Article 14 of the International Convention and Article 6 of the European Convention have accepted closed hearing under some conditions, but, even in cases of necessity to protect the life of the parties, it won't make any obligation for the court. (Omid, J. 2003, P. 38)

This includes both the public hearing and announcing the verdict. The latter part of paragraph 1 of Article 6 states conditions that the trial could be held in closed:

"Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Limited exceptions that have been set in this article is related to the trial and proceeding and could not refer to the public announcement of verdict. ECHR has rejected any restriction (even indirectly) in this regard.

ECHR in its own proceedings, the respect the general principle which the information related to the proceedings in the court should have publicity. Not only ECHR's verdicts and decisions regarding the acceptance or rejection of claims, but also all the documents that are filed in the office of the Court are also publicly available. ECHR every month regularly publishes a brochure about current affairs which contains a summary

of the contents of the cases that have reached to the stage where the court must communicate to the concerned state. Therefore, the complainant's identity is publicly available. However, the President Branch of the Court in "exceptional and justifiable cases" could allow complainant's identity remain anonymous according Article 47(3) of the bylaws. So the claimants who are interested in proceeding be anonymous must provide in writing his reasons for non-disclosure of his identity to the Court. If the request for confidentiality be accepted by the Court, commonly he would be addressed as X or Y in the proceeding. (Leach, P. and others, 2007, P. 56)

Court's jurisprudence on the scope of Article 6 law has been criticized in some cases in the point of view of domestic law, in some cases (such as disciplinary proceedings relating to the trade), the necessity of declaring the Court's verdict, has been followed by domestic judicial procedures' criticisms. Article 6 (1) after indicating the necessity of public hearing adds:

"...The press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The truth is that a hearing of the Supreme Court in Iran only examines the legal issues which public does not care much about them. There is still more evident that the police investigation and preliminary proceeding are anonymous, actually in countries where this institution exists and even in fact, ECHR does not problem with this as declared:

"The method of applying paragraph of Article 6(1) depends on the characteristics of the stage of proceedings."

Finally, the publicity is limited to the proceedings (District or appeal Court) and according to ECHR if the case in District or Court it was public hearing, "reconsideration of a closed hearing in the stage of appealing, based on the characteristics of the case, could be justified " (Pradl, Jan. et al, 2014, P. 587)

ECHR also notes that while court of appeal is fully authorized, however, in the case of butane VS Denmark in which only the defense attorney of the accused was present in the Supreme Court, which it was not a fair trial, the Denmark Supreme Court, was forced for assessment of the case and the Supreme Court has indicated some details related to personality of interested party hence the supreme Court was obliged to "take positive measures" for the necessity of his attendance. Finally, in some cases, may be closed hearing to be held.

According to Article 6 (1) of the Protection of Privacy and even - in a broad definition- when the interests of justice is considered so often, there are some specific provisions in national law for closed hearing. (Pradl, Jan. et al, 2014, P. 588)

In Iran's law Article 165 and 168 of the constitution and article 188 of the former Criminal Codes of Procedure Act, 1999 has anticipated public hearing. Article 165 provides:

"Trials are to be held openly and members of the public may attend without any restriction unless the court determines that an open trial would be detrimental to public morality or discipline, or if in case of private disputes, both the parties request not to hold open hearing."

And Article 168 states:

"Political and press offenses will be tried openly and in the presence of a jury, in courts of justice. The manner of the selection of the jury, its powers, and the definition of political offenses, will be determined by law in accordance with the Islamic criteria."

Article 352 of the new Criminal Codes of Procedure Act, 2013, in this case indicates:

"Trials are public, except in unpardonable crimes which the parties or the plaintiff, request the closed court.

Also the court, after consulting to persecutor issues the warrant of closed hearing in the following situations:

- 1- Unchaste acts and crimes against good morals.
- 2- Family disputes or private claims upon the requests of both parties.
- 3- Having an open session which disturbs security or religious feelings."

6. ATTENDANCE OF JURY IN PROCEEDING OF POLITICAL AND PRESS OFFENCES

The attendance of jury in in proceeding of Political and press offences is a considerable guarantee for protecting the rights of the accused who committed mentioned crimes.

According to scholars and researchers of criminal procedure, attendance of Jury as representatives of society will strengthen and support both monitoring and public participation for protection of fundamental rights and freedoms of individuals during the criminal trial. History of jury institutions in different countries indicates that parallel to the development of revolutionary democratic societies, tendency toward criminal trials by jury was extended. (Moazzen Zadegan, H.A., 1998, P. 9)

7. PROHIBITING TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT TO OBTAIN CONFESSIONS, SWORN AND TESTIMONY

Pursuant to Article 5 of the Universal Declaration of Human Rights which states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

And also Article 20 of the Universal Declaration of Human Rights in Islam, no one can be subjected to physical and psychological torture. International Covenant on Civil and Political Rights in Article 14(3) provides:

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt.”

Also according to Article 38 of the constitution:

“All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law.”

Article 578 of former the Penal Code was referred to physical harassment. However, since mental and physical harassment has more negative effects on individuals, this article could be criticized.

Article 169 of Islamic Penal Code 2013 with regard to the issue indicated that confession, report, testify or oath that are made under the coercion or duress, torture or threat suffer from lack of legal validity and any conviction based on such confessions, is at risk of invalidation and the court is required to investigate further. Single article law of respecting the legitimate freedom and rights of citizens in paragraph 9 recognized that obtaining any confessions by any form of torture is legally and invalid and in paragraph 10 stated that investigations and interrogations based on scientific principles and practices is necessary and Violation of this principle is liable to get serious punishment.

Article 6 (1) of the Convention says also no one has the right to compel the accused to testify against himself. However, this right is not absolute and may allow governments to interpret silence of the accused in another way.

In such circumstances, ECHR consider taught evidences provided by the national court.

Because "the immunity from not to incriminate oneself " is recognized in international human rights instruments and has been applied by the Strasbourg Court based on the European Convention on Human Rights, but still it is difficult to determine its scope and underlying rationale. In 1993 the ECHR recognized this immunity as part of guarantee for a fair trial that was mentioned in Article 6 of the convention. (Ashworth 2005, P. 130)

From the view of The ECHR, "the right of not to incriminate oneself " is not related to some exercise that will not interfere in accused's will, evidences such as documents, accused's exhale, blood, urine and body tissues for DNA test of accused, such types of evidence cannot be excluded from the proceedings. (Saunders v. UK, 17 December 1996)

8. PROHIBITION OF IRREVERENCE AND DISRESPECT OF THE ACCUSED:

Government should respect for the dignity of individuals in any position.

The individuals who are accused, convicted, imprisoned and deported are entitled to this honor based on the law. Some who have committed a crime and are detained base on the law, obviously, should be treated fairly and legally. Thus, applying any unpleasant behavior such as disrespect towards them is not valid. Pursuant to article 39 of constitution:

“All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.”

There are not any specific articles of Islamic Penal Code for disrespect of accused's dignity, and in this case, one should refer to article 608. As well, Article 176 of the Implementing Regulations of the prisons organizations and Security and Training measurements provides that harsh punishments, excruciating and derogatory in prisons are prohibited.

Offense, as a bitter truth, exists in every society. So at the same extent that governments are obliged to respect the rights and freedoms of individuals, they should struggle with the offenders, to maintain order in society, as one of its important duties.

But combining the dignity of persons and public order, it should be noted that freedom is a natural rights and is common but offensive to public order is an exception in this case, so arresting and persecution, must be reasonable, justifiable and on legal basis.

9. ACCELERATION AND AVOID PROLONGATION OF THE PROCEEDINGS:

Prolongation makes unreasonably a judicial arduous process in the courts. Judicial systems in many countries are suffering from this problem. Even developed countries as a model of justice are not an exception.

Prolongation of procedure, although is inevitable in some legal cases, but in criminal matters is unacceptable and out of the criteria for a fair trial. Because criminal cases demand an immediate and place without delay investigation and proceeding so the right of the plaintiff and the accused be protected and also in such a case the public could see the immediate action of justice system dealing with the criminals.

In this regard, the Iranian judiciary issued a comprehensive guideline for removing Prolongation in jurisdiction of criminal matters. (Goldust, and others, 2009, P. 49)

Acceleration in proceeding shall not interfere with the fundamental rights of the accused such as the presumption of innocence and the rights of defense but it should be taken all necessary steps for accelerate the process of investigating and trial. Due to the time delay in examining the evidences, it will weaken or ineffective the evidences, however hasty will corrupt the judgment and justice. (Khazae, M., 1998, P.345)

The desired speed of the legislator should also protect the rights of the plaintiff, the accused and the community, such as the right to an attorney, explaining the charge to the accused, legal and appropriate investigation, the right to protest verdict for the beneficiary, considering reasonable and appropriate period of time to address complaints and so on. In 1959, along with the European Commission of Human Rights, the European Court of Human Rights was set up in a two-step procedure for monitoring the implementation of the European Convention on Human Rights. Gradually with increasing the number of members of the European Convention and number of applicants admitted to the supervisory body, plaintiffs had to wait very long time for a time period of about 4 to 5 years to deal with a case. The cases first were introduced in the European Commission of Human Rights and, if approved by the Commission would refer to the European Court. The high numbers of cases resulted in a prolongation of procedure. Protocol No. 11 in 1994 has removed the commission in connection with the disputes that has been raised because of acceptance of some complaints between the court and the commission.

Reforms of protocol No. 11 (removal of the Commission despite some objections) did not preclude prolongation of procedure. Statistics relating to complaints filed with the court clearly indicates the rising trend of complaints and delays in the proceedings. The main reasons for the increase in complaints in this decade were an increasing in number of Member States on the one hand (Mostly because of the collapse of the Soviet Union) and the promotion of awareness of citizens about their rights and their trust to the Court. However the number of pending claims also increased as a result of increased complaints. (Deputy Education of Judiciary of Province Tehran, 2009, P. 55)

In order to decrease the duration of proceeding and also facilitate ways of dealing with the approval and entry into force of Protocol No. 11. Since November 1998 single-step system has been chosen for monitoring and proceeding cases. Protocol No. 11 by removing Commission has played important role for acceleration of proceeding, without any substantial change in the provisions of the European Convention European Court or standards or criteria established by the European Court.

But still with increasing number of requests to the Court again the process was relatively long. However, until now the procedure is a single-stage in replace of two-stage system.

At present, the European Commission of has been replaced by European Court of Human Rights. The Court with a limited composition of participants may unanimously reject the request. Otherwise a branch of the court with Greater combinations of Members, shall acceptance the request, therefore, it seems that Protocol No. 11 was a result of majority of states that wanted a single court and in other side minority under the leadership of the United Kingdom [UK] wanted the two-stage system consisting of primarily and appeals courts. (Pradl, Jan. et al, 2014, P. 331)

10. PROHIBITING DISCRIMINATION

All people have the right to be treated equally before the law. It means that the law should not discriminate and judge and other officials shall not apply the law in a discrimination way. Equality guarantees the prohibition of discrimination and public authorities also support this principle. However, that does not mean any different behavior is seen as discrimination because discrimination may be permissible whenever it's reasonable and based on objective criteria.

Discrimination not only between parties or defendants could threaten the judicial security but also discrimination among some staff within the judiciary could be harmful for judicial security.

Such discrimination in judicial organization will make interested and sympathetic judges to lose their motivation and attention to perform duties accurately and in various forms of deliberately and inadvertently make difficulties in procedure which will lead to a prolongation of the proceedings.

6. CONCLUSION

This research has been reached to this understanding that the purpose of judicial security, in particular, is security and safety, practically and theoretically and it will relieve any individual or entity so they won't be prosecuted for no reason, and arbitrary and if for any reason, they are involved in any form of judicial

proceeding as the plaintiff or the defendant or the accused or even the third party, There are mechanisms in order to ensure fairness and justice, and various aspects of humanity will be respected such as life, dignity, freedom, privacy, intellectual and emotional security, properties, job and house in a way that those won't be harmed without reason or in a legal base.

Such security will be achieved in the rule of law. Though if individuals committee an act contrary to the law, they would be subjected to a criminal investigation, prosecution and punishment in a legal framework.

Respecting such legal framework is in exclusive jurisdiction of the judicial system thereby arbitrary investigation and punishment being discouraged. This principle is called the rule of judicial administration for government.

The availability of judicial system for public and accessing to legal assistance will guarantee the implementation of judicial security for citizens. The independence and impartial judiciary can claim for establishing justice in society and respecting the rights of individuals.

By providing these principles, a comprehensive judicial security when will be achieved that the procedure and performers of this process act in a manner that it does not harm the rights and freedoms of individuals and individuals feel that they are treated completely fair and impartial and reasonable with respect to the presumption of innocence, the prohibition of torture, within a reasonable time and they have reached to their right or have been punished in a equality situation and complete awareness of their rights.

European Convention on Human Rights is one the human rights treaties has of taken important steps in this area and the verdicts of ECHR has played an important role in the development of criminal law of states parties. Iranian criminal law with respect to such standards is developing in this area, especially with adopting the new Criminal Codes of Procedure Act, 2013.

No doubt that the threatening gasps for legal security of citizens more or less exists in procedural and substantive acts of Iran but with comparison to new provisions of the Penal and criminal laws to the former, one can clearly be observed this new approach of Iran's legislator in increasing the level of judicial security for citizens accordance with international standards.

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