

An Investigation of the Defense Rights Lawyer in Iran and Azerbaijani Legislative Systems

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ABSTRACT

Criminal justice has been one of the most important human desires throughout history. To achieve this goal might be possible through the realization and providing a fair hearing based on justice and the defense. One of the independent social institutions and undeniably constructive role in establishing the rule of law and criminal justice and fair trial is the active and unquestioned presence of lawyers in sentence judgments. One of the signs of presence of criminal justice in modern societies is the lawyers' attendance during the preliminary investigation. Plurality and congestion of work in the courts often reduces the scientific analysis of the judgment, but lawyers can be the light guides of courts in reviewing, researching and careful study of cases and its implementing rules and regulation. Of course, this fact can be achieved if defense lawyers are present in the judicial process through compiling with all laws and regulations. In this paper, the presence of attorney in a preliminary investigation of criminal law in Iran and its role as one of the two wings of the angel of justice along the Supreme Judicial Court justice will be discussed. Moreover, the situation of lawyers in preliminary analytic investigation in the legal systems of Russia Azerbaijani will be discussed.

KEYWORDS: The culprits rights, Islamic republic of Iran, Azerbaijan republic, lawyers.

INTRODUCTION

Security refers to a kind of endurance on which the people of a country live without fear about their lives, reputation and spiritual rights dangers. So the practice of this right needs two important guarantees:

1. The life grantee of people from all kinds of illegal interruption.
2. The security guarantee of citizens through supports of society toward each one of the people in order to keep their rights and freedom. Therefore security makes duty for both government and people. It means that people are supposed to show respect toward each others' rights and government is supposed to, first, put rules and base official companies and judges for people and second the government itself show respect toward that confirmed rules and never interrupt and penetrate it. (Hashemi, 2005)

Iran's Constitution has put the right for supporting every one, whether male or female, in the main duties of government and in the section 3 (People's Right), with showing some of fundamental rules, revolved some guarantees to maintain these rules. One the most important of this right is the right of the culprit's defense in rejecting the sentence or illegal insults.

If we take a look at culprit's defenses, describing the meaning of defense is totally necessary. Scientists and scholars of the cause haven't taken one meaning from this and each of them interpreted this conception in a way that they like. Fvnytsky (1996) has put the mandatory and figural difference between defenses which include giving the right answer which has defendant aspect or in sentence confirming and rejecting culprit crime and also the collection of culprit legal needs and whatever important in legal right and support in the count. But from the aspect of figures one defines it as a reprising culprit in a count (Fvnytsky, 1996). But Astrvkvyeh (1999) do not accept not only this meaning and separation between defends and dependency, but also believes that defense doesn't have many meaning. And in general defense in from any sentence is called dependency on which the government holds the culprits defense right with the presence of lower and other qualified people. So there is no one correspondents with defendant and lower (Astrvkvyeh, 1999).

Astrvkvyeh (1999) defines defendant as a rejection of the culprits sentence, the definition of inexistence of the sin or culprits breaking the law or defining the sentence level and punishment to the culprit. The whole actions which is done in order to free or limit the light crimes sentence or the actions of punishment discount in one count for the culprit is called defense. He believes that dependency is the actions of the defendant for example lawyer, that the government has given him qualification permission in order to use these rights and put the defense in practice.

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In the opinion of Astrvkvvych (1999), defense is not finished just with the being a small part of court actions and the lawyer part in defense or the culprit sentences. he says whomever helps the culprit to make him free whatever document which is used to determine the limit of the punishment and the things which are done to help them not go beyond law or one of it and diversion prohibition. All of them are called defense too.

Zinatullin and Zinatullin (1997) are on this belief that from the aspect of subject investigation, defense is called any activities which are done to dominate or decrease the punishment of the culprit and also the guarantee and maintenance of legal needs of culprit during the court section (Zinatullin & Zinatullin, 1997).

In our opinion, the recent definition is in accordance the law. Some scientists said that the defense right is a kind of right that with the help of that the person can annihilate the crime and curtail claims against him which proposed from the right seekers or high judgmental permitted associations and he would use the whole facilities to make him herself free (Moazenzadegen, 1997).

For culprit's dependence rights confirmation from the fair investigation, we need some principles in the 5 level of investigation which includes crime definition, person, primary investigation, judgment and putting sentence. In the law of Islamic republic, the support of help request, defense of people in a fair investigation, judgment independency and lower preparation, judgmental responsibility and the fair and justice full association of judgment with the use of the basic principle of freedom and legal pursue and investigation about culprits rights have been guaranteed.

A - Defend Right in Human rights Documents

In some countries, attorneys' attendance in the criminal proceedings is not regarded necessary. In the vast country of China, it is believed that people themselves are criminal trial courts and they must take into account all aspects of the defendant criminal act that is beneficial to recognize accused, so in this country the boom in terms of representation in criminal matters little (Akhoundi, 2002).

The presence of international regulations documents has emphasized criminal defense lawyer attendance. Some cases of this emphasis are as follows:

Section D of paragraph 3 of Article 14 of International Covenant on Civil and Political Rights and third section of paragraph 3 of Article 6 of European Convention on Human Rights stated that the defendant has the right to be present and has the right to defend himself or by attorney. If he/she lacks the ability to hire a lawyer, free lawyer should be hired for him or her. Section 2 of the second paragraph of Article 40 of the Statute of the International Criminal Court states that: "The defendant has the right To presents for his defense is entitled to legal aid or other appropriate assistance (Ardeshir, 2006).

B - The realization tools of defense right

There are some methods to protect the rights of criminal defendants including anticipated attendance of lawyer in all stages of criminal proceedings. Election of attorney and his attendance in judicial court do not need ceremonial function, decision of client and acceptance of the lawyer is enough to judicial court.

There are two issues regarding the presence of attorneys in criminal trials: 1. acceptance of the lawyers, 2. Allowance of an appropriate defense.

1. Acceptance of the lawyers

Acceptance of the lawyers means that no court has the right of preventing defender from having a lawyer in the court (Ashouri, 1997).

Defense lawyers defend not only from the right of accused but also protect law, justice and society. His presence is a counterweight that keeps the balance of justice and certainly deters judges from unfair sentencing. Therefore, many countries accept the legal terms that the courts should be forced to have lawyers.

2. To provide a proper defense by the courts

It means that courts, with this fact in the mind that the lawyer defending the accused is his right and is not a ceremonial function, should provide the condition of suitable defense as a sign of court's impartiality (Omidi, 2002).

According to legal justice, final creative expressions without lawyers present are in violation of and will renew the investigation. In most countries, based on international documents and conventions, even in the charge stage, the accused is informed of having defendant's lawyer and is reminded that he can refuse to answer questions in the absence of his lawyer (Goldozian, 1996).

Rights of accused in the preliminary investigation

In this level, which is the most important level in investigation and makes the fundamental of criminal records, three actions are done:

1. Evidence collection to or against culprit.
2. The needed steps to taken not to help the culprit run away or hide.

3. Giving opinion about the committed crime in the frame of one of the contradictions of persuasion prohibition or confirmed.

Also in this level, the persuasion prohibition or confirmed and the following items must be taken into consideration:

1. The following right of the investigation lawyer. The culprit must have the right to summon himself in front of a judge with a lawyer. The investigations must be done in front of the lawyer and cannot be considered private (Shirazi, 1992).

2. Giving the sufficient time for defers. The defense right is one of the most natural human rights. So during the primary investigation and before putting sentence the sufficient time must be given in order to prepare defense instruments.

In the case that the culprit is arrested, the right and possibility of evidence collection and talking with evident people is given to them.

3. **The rules governing of collecting the evidence;** Protection of accuser's private life is an important issue that must be carefully considered by the judicial authorities and executive officers of justice since the slightest carelessness in collecting evidence and discovery of the crime is alleged infringe upon the rights and fundamental freedom.

Based on the 38 the section of Islamic republic of Iran's Constitution all kind of torture to gain information and confession are totally forbidden and use of obligation to confess is totally restricted. These kinds of testimonies are completely worthless.

Furthermore, whatever physical torture and annoying which obligate the culprit to confess are mental of the culprit is considered as Torture. For example keep a prisoner in sole one or keep two in a sole- cell or hiding the eyes of the prisoner or make him her over awaken or investigation at night, abasing, using bad words, putting pressure on the family of the culprit or prohibit the religious actions of him all of these are considered as a Torture.

The injection of drugs to the culprit in order to make him tell the secrets of his heart is also considered as torture (Sarshar: 1992). In 38 the section all of these thing have been put in to consideration.

The optional protocol of social rights and policy let the government fight against torture and this help the immigrants a lot.

The confirmation of international association related to the behavior of responsible, section 1979 and economical and social confirmation about how to treat with culprits in 1957, has asked the governments about limitation for their crew and clients in their behavior with the culprits.

3. The prohibition of unpermitted interferes in shelter, private life, transportation of letters. In Iran there is a confirmation on the people's rights such as section 582 which prohibits the investigation from opening them among them and evaporation unless there is an official permission for that.

4. Putting the rule of appropriate deal with the culprit in the most important jobs of the judge in the primary levels. In the law book they are included as: prone promise to be summoned, putting money for temporary release and returning gaining responsibility with the money which is put as budget; talking important documents and temporarily arresting.

Temporary arrest is the most important and the harshest step against the personal freedoms. This continues during primary research or until finishing the investigation on the condition that it would be less the exact time of sentence and is totally against principle because prison is the place of sentenced prisoners. Some of these actors' harms include mental and physical harm to the culprit, losing family relations, divorce and losing jobs, etc.

With giving credit to this temporary arrogations which is a kind of freedom taking, we must consider that if the investigator and responsible disagree about this, the fair protest must be told to the culprit and a special notebook for registering the name and the starting point must be noted and prepared. This period must be counted in the case of prison – sentence related to the same crime in the taken period. Culprit has the right to protest against the given sentence and this right must be noted for him. Every time the reason is annihilated, the sentence must be banished. Culprit also can ask the judge to the sentence away and make him free. If the inspector or the count eliminate the sentence, again the culprit in free to go. Being in prison while investigation most is not in the contradiction.

The culprit has the right to use sleeping facilities, cleaning, Teaching and education and physical education. Must use the prison food which is given to him with scandal and if he is sick, based on doctors' advice they most give him sick – food and drink and diet. Dress prison doth and must be distinguished from prison and culprits. Sending his personal staff and money to his selected man/ woman must be done and transpiration too.

The woman prisoners can keep their children for 2 years. The 2 until 5-year old children are separated and kept in kinder gardens. The culprit is not obligated to do so unless the inspector or court says so.

Today in almost all advanced countries, governments want to empty prisons from culprit and just keep prisoners. That means to have a judgmental control and other facilities to keep them until their court time arrives. This method is common in countries like: France, Germany and Italy.

5. The last suggestion; the end of primary investigation and is obverted like the end of persons, elimination or sentence confirmation. Through keeping the right of private – protestors the pursued elimination can be revised and this law is truly confirmed in 3rd section, and we must add to this section that all of those statements and rules must have credence and documented (Ghasemzade, 1997).

Failure of the defendant in being adequately informed about the file contents reduces his success in defending the client and prohibiting the consult of the client with the lawyer in the investigation phase of is inconsistent with the philosophy of attorney's presence at the preliminary investigation. Moreover, absence of counsel at the hearings testimony of witnesses, examination, etc. decreases the probability of effective defense of the accuser's rights (Shirpuor, 2012)

Defending right of accused in Azerbaijani law

In the 48 the section of basic laws of Russian, it is conformal that all citizen can use the help of lawyers and curtail help and the guarantee to this action is completely given.

According to rules, every citizen can take advantage of courtly help of being culprit – accused – sentenced – imprisoned level.

Based on the 61th section of basic laws of Azerbaijan republic, everybody can take benefit of using the high level of courtly and rightness help so freely. According to this law, in matters that proved in law the citizen have the right to use those helps freely and in would be on government account and everybody in every period of being accused, can use the help of the lawyer.

Based on 35 the section of Islamic republic of Iran, two sides of quarrel can take use of the lawyer and if they cannot find it or have financial problems they want to be prep reel for them (Abdullayev, 2008).

The thing which is important is that in all of these country these right have been noted, but in those country the law is conformed in different styles and almost on the contrary methods which has the place of dissension.

Based on 16 the section of Russia crime minister, every culprit has the right to defend him fully and he or she can do it with the help of himself or the lawyer or his legal representative.

Court inspector or judge remind these rights to the culprit and teach him how he or she can use them and defend himself in the country of Russian. Even in some sections it is totally approval that culprit must defend himself and must deliver a lawyer or a loyal – logical represented in order to help others understand the situation and help him reject his accession and the courtly-in-chart must accept it and take it into great consideration.

Ajani this part is added that the culprit can use the lawyer help completely free in all period of accession.

The 19 the section of crime-laws of Azerbaijan republic confirms that in the period of investigation all courtly –in– law responsible must help and think about how the culprit can take advantage of lawyer helps.

According to 19th section of the law, a lawyer must help culprit to use facilities and help himself in rejection the accession (Huseynov, 2009).

Conclusion

Based on the points put forward in this article, it can be claimed that the legislative system of Azerbaijan and Russia and the right to legal defense to defendants and suspects are described accurately and completely and without any restriction and it, in turns, makes the lawyer to perform legal duties in order to take necessary and effective defense in the process of investigating files.

In spite of predicting the legal defense right of citizens in the Constitution of Islamic Republic of Iran and other aforementioned laws regarding the use and enjoyment of the accused or the lawyer or lawyers of their choice (Representations capture) in the judicial process, there are legal vacuum of having the right to select counsel present and the prosecutors in preliminary investigation and restrictions contained in the Code of Criminal Procedure Article 128 and Claus Which is the reason of merely monitoring role an attorney in the preliminary investigation and makes the lowers not interfere in the preliminary investigation in any way and in the case of recognition of Judicial authority, based on 128 article of the above mentioned rule, lawyer's presence in court would be faced with some limitations.

Result of this vacuum and legal restrictions infringe upon the rights of the defense attorney defending accused of being ineffective and even higher in the trial. However, the lawyer defend not only accused but also will defend right and justice, law and ultimately the community. Attorney is the weight that keeps balance and scale of justice and discourages judges from unjust verdict. So, it is hoped to amend Article

128 and its amendments in Criminal law of Islamic Republic of Iran and predict the new laws, restrictions and legal vacuum regarding the accused's defense of constitutional reform and to be eliminated in accordance with the thirty-fifth.

REFERENCES

- Abdullayev, A., 2008. Criminal law, Azerbaijani, Eleventh Edition, Baku, Publishing Legal Literature.
- Akhoundi, M., 2002. Code of Criminal Procedure, Volume II, published by the Ministry of Islamic Guidance and Culture.
- Ardeshir, AA., 2006. The international human rights documents, Danesh Paghoh publications, Vol. 2.
- Ashouri, M., 1997. Criminal Justice, Ketabkhane ganje danesh Publications, First Edition.
- Astrvkvyich. I.S., 1999, the executive steps of crimes in the Soviet Union. M.: Yurid. lit., I cild, I cild.
- Fvnytsky, I.I., 1996. The executive process of criminal trials. SPb, Alfa, I cild
- Ghasemzadeh, A., 1997. Presentation of legal principles of interrogation, faculty of law and political science press, Tehran University.
- Goldozian, I., 1996. Speeches in criminal law, Justice publication.
- Hashemi, S.M., 2005. Human rights and notions of equality, fairness and justice. Tehran. Publication university.
- Huseynov, A., 2009. Code of Criminal Procedure Baku, Dyjsta Publication.
- Moazenzadegen, H., 1997. Rights in the Constitution of Islamic Republic of Iran's justice. Journal of legal opinion.
- Omidi, J., 2002. Court documents accused of relying on international and regional human right, Journal of Justice Association Center.
- Sarshar, M., 1992. A few warnings about the prosecutors and investigators in support of freedom and individual and social rights during interrogation, Journal of Justice Association Center.
- Shirazi, A., 1992. Judicial justice; lessons from experience and history, Journal of Justice Association Center
- Shirpour, V., 2012. Attorney position in Iranian penal code. Journal of Legal Proceedings, 92.
- Zinatullin, ZZ., TZ. Zinatullin, 1997. Public issues and advocate charged with criminal matters. Ijevsk: Detektiv-Inform.