

Observing the Accused Person Interrogation Rights in Pretrial Period in Iran's Law and the International Charter of Human Rights

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Abstract

The culprit is one of the fixed parties in penal judgments and because he is to be stood before the social rights with the support of the prosecutor he enjoys a vulnerable judicial standpoint. The person being charged with a crime or an offence faces the judicial system in the preliminary investigation stage, in other words, pretrial stage. In this stage the culprit, due to the fact that has not been convicted to any crime, he has to undergo interrogation and investigation based on the acquittal principle and preservation of the human prestige and credit. Interrogating the culprit is the main axiom of the pretrial period and it is possible that the culprits be exposed to torture and inhumane behaviors as a result of their rights being ignored and their human dignity being refused by the interrogating bodies. Therefore, the accused person should be enjoying the rights and liberties under the shade of the fair judgment. On the other hand, fair judgment is not intended solely for safeguarding the accused person's defense rights, rather a just proceeding in its exact meaning is seeking to serve the preservation and supporting the rights and the liberties of all of the individuals who somehow share the legal procedure process. Observing a fair procedure should not be taken as to mean leniency for any single one person, rather observing such principles in the proceedings causes the humanity aspect of the parties not to be underestimated and justice and fairness can be implemented and served regarding their rights.

In the present article because it is carried out in humanities realm we have tried to make use of an analytical-descriptive method through the use of the international charter of human rights and requirements and the constitutional laws in Iran and this is while the accused individual rights in the pretrial period has also been enumerated and elucidated on and then we deal with the survey of the Iran's judicial system and the international charter of human rights regarding the methods of keeping a hold onto such rules and regulations and consequently we will figure that in both of the described systems it has been frequently emphasized on observing the accused person's rights in the majority of the cases in this period and there has been criminal enforcement mandates for it.

Keywords: the international charter of human rights - fair procedure, culprit's rights, interrogation period, preliminary investigation

1. Introduction

Accusation is a very complex stage; since it is expected from a person or a group to undertake to perform an offence or crime in which the others' rights can be wasted, so, from the one hand, preserving the human rights make it compulsory to determine that a crime or an offence has been taken place and a right has been wasted then there is a need for the culprit to be punished and to compensate for the wasted rights, and, on the other hand, the process of inquiring an accusation does not cause abusing the culprit's rights and liberties, inquisition of his privacy, his or her suspicion or mistrust and finally revealing of his secrets. The subject's complexity doubles when the investigation and the survey of the documents and evidences lead to the acquittal of the culprit and his or her innocence is proved. This is the first challenge that is faced with in the process of investigating an accusation which causes the prosecutors' fuss to be aroused. The humanity is the source of special rights and privileges.

Convicts or the individuals suspicious of criminal offence are vulnerable persons who are exposed to cases of

human rights violations such as torture and other cruel and inhumane behaviors during the investigation period and penal proceedings and procedures. Therefore, the suspect or the convict should enjoy rights and freedoms under the shade of fair judgment. If we divide penal procedures into three stages: 1. pretrial period; 2. Trial period; and 3. Post-trial period (executing the verdicts) the accused person would have rights during each of these periods. According to the sensitivity of the preliminary investigation stage from the perspective of collecting proofs and that the ignorance of some of the procedure principles causes the culprits to suffer from some of the security and legal authorities' arbitrariness and perverseness, so the essential human prestige and reputation goes under question. Not observing the culprit's rights in the pursuance and procedure periods by the authorities in charge is in itself an explicit sign that justice has not been served and this is an abuse to the individual and social rights and freedoms. Accordingly, what needs to be considered in these stages is, from the one hand, observing the accused individual freedoms and rights and, on the other, observing the social rights.

According to the new penal law rules and regulations and the international charter of human rights¹, the current study deals with the objective of the survey of Iranian law system approach and the international charter of human rights regarding the method of observing the culprit's rights and its punishment enforcement mandates in the pretrial investigation period. The study methodology of the current research is based on a descriptive-analytical method through making use of library means and the related topics and ideas have been studied and extracted from the relevant books and the internal laws and human rights documents.

2. Observing and Watching the Interrogation Period Rights

The culprits or the individuals suspicious of the criminal offences are susceptible individuals who may be subjected to human rights violation cases such as torture and the other cruel and inhumane behaviors in penal interrogation and procedure periods². Therefore, the culprit or the suspect should have rights and freedoms under the umbrella of fair trial and legal proceedings. Some of the culprit's rights which need to be watched during this important stage are as below:

2.1 *The Right of Respecting Private Life, Home and the Individual Writings*

One citizenship right common between the offender and the victim of the crime is preserving their privacy and their personal secrets. Such a right is among the rights which have to be taken into consideration within the penal lawsuits in the process of procedure by the judicial authorities and the public prosecution enforcement bodies.

Homes are the private places of dwelling and human comfort and a place of the human personality growth and development within the framework of the family, thus it needs to enjoy tranquillity and security. In Islamic system there are strict recommendations implying forbiddance of searching³ and interfering in the privacy, beliefs and private territory of the individuals. The individuals in their lives are needful of having a series of private, public, occupational and familial relations. These relations cannot be naturally hidden from anyone and knowing these relations is essentially fault-free. But, everyone has one hundred percent private issues and the necessary condition is that such secrets should not be revealed and divulged. Poking the nose into the life of the individuals' private lives of any form is ethically despicable and legally liable⁴.

Interfering in the individual's private life within the framework of the penal investigation should be legal and it needs to be for the purpose of a legitimate target and the undertaken act should be a legal measure. "Privacy is a political concept and it has been today expanded to include conscience and thought freedom, control over one's body, having loneliness and solitude at home and in private places, having control over personal information, freedom from the others audio and visual surveillances, protection of one's prestige and credit and support against inquisitions and searching and pursuance. Privacy right is the right to live with one's own taste and tendencies and with the lowest interferences by the others, to put it differently, it is a right based on which the individuals can determine to what extent the others can have access qualitatively and quantitatively to the information about them⁵".

Article 22 of the constitution declares "The dignity, life, property, rights, domicile, and occupations of people

¹ The international charter of human rights consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966)

² Taha, Farideh, Ashrafi, Leyla, 2007, "fair trial", Mizan, 1st ed., p.99

³ Surah Hojorat, verse 12

⁴ Hashemi, Seyyed Muhammad, 2005, "human rights and basic freedoms", Mizan, 1st ed., p.294

⁵ Ansari, Bagher, 2007, "privacy rights", Samt, Tehran, 1st ed., p.11

may not be violated, unless sanctioned by law". In this regard, as the mandate for the enforcement of the aforementioned principle the article 580 of the Islamic punishment act enacted in 1996 asserts that "any one of the judicial or non-judicial servants and officials or any person being at the service of the government who has been assigned with a task by the government should not enter any person's home without permit or acquiring allowance from the landlord, otherwise s/he is to be sentenced for no less than one-month imprisonment, unless s/he proves that s/he has entered by the order given from one of his or her superiors who has had the jurisdiction and qualifications of issuing such an order and he or she has had to obey the orders given by the superior and in this case the above-mentioned punishment would be enforced against the issuer of the order and so forth". Also, searching and investigating from the homes and places and discovery of the tools and instrument of performing a crime necessitates the chapter five of the penal procedure act enacted in 2013 to be satisfied.

Article 25 of the constitution declares "It is forbidden to inspect letters and to confiscate them, to disclose telephone conversations, to disclose telegraphic and telex communications, to censor them and to stop their delivery. It is forbidden to wiretap conversations. All forms of inspection are forbidden except according to law". Therefore, the legislator has accepted an exceptional principle for safeguarding the individuals' communication security based on which the privacy of the individuals who are likely to disrupt the social security and comfort can be searched and inquired through observing avoidance from incurring harm and loss to the individuals' prestige and reputation and it is by constitution in the legislator's discretion to recognize the base of action and regarding the aforementioned principle enforcement mandate article 582 of the Islamic penal law has stated that "any of the government servants and officials who, in cases other than what has been allowed by the law according to the case, open the individuals' letters and telephone conversations or stop them or destroy them or search and investigate them or record and eavesdrop them or without being permitted by the owners of such things write such things down would be sentenced to from 1 to three years or would be sentenced to pecuniary punishment from 6 to 18 million RIALS". Also, in this regard, paragraph 8 of the single article of the constitution concerning respecting the citizenship legitimate freedoms and preserving these rights holds that "local searching and investigations for arresting the fugitive criminals or discovering the crime tools and instruments based on the law regulations should be conducted without causing interferences and with all the due caution and it has to be avoided from abusing the documents and the objects not related to the crime or the culprit and revealing the letters and writings contents and familial photos and films and inopportune confiscation of such things".

Based on article 3 of the universal declaration of human rights "everyone has the right to live, be free and enjoy security" and also the article 12 of the aforementioned announcement and article 17 of the civil and political law international convention expresses that "no one should be exposed to the interferences and abuses in their private life, familial affairs and place of dwelling or writings protected by the law". According to the above-mentioned subject matters it can be said that: 1. the principle here is not to interfere in individuals' life and privacy and writings unless otherwise has been allowed by the law, 2. In case it is permitted by the law, the method and the quality of the investigation and interferences should be corresponding to the rules and regulations and falling short of these is considered a violation from the law which would be subsequently punished, 3. While performing legal interferences, respecting and paying attention to the human rights should be taken into consideration.

2.2 The Right to Being Humanly Treated with No Torment

Preserving the human dignity and sublimate values makes it necessary for the personality, body and the spirit of the individual to be immune from any sort of torturing and torment. The individual's trial process should be carried out without any fear, threats, torture, agony or severe physical or psychological suffering in order for the individual not to be deprived of his or her freedom, choices and the sovereignty of the lawsuit parties. To prove the claim, the judge should have available clear-cut evidences to be able to issue an appropriate verdict. Resorting to torture and pressure for acquiring confession which is a heinous effect remaining from the inquisition of thoughts in medieval era is, unfortunately, still practiced in many of the courts. The despotic judges and rulers make their opponents confess in this way in order to fortify their government foundation through suppressing these rivals⁶.

According to the paragraph 1 of the convention against torture article enacted on the tenth of December in 1984, it has been stated that "torture is any sort of action which imposes intentionally pain or severe physical or psychological sufferings on the individual especially for the purpose of making the individual confess information regarding himself or a third party or to be punished as being accused of an action which has been committed by him or the third party or he is suspicious to have allegedly committed, or to terrify or urge the

⁶ Hashemi, Seyyed Muhammad, Ibid, p.315

individual(s) or the third party or as a result of any other reason which is based on discrimination provided that such pains and suffering should have been imposed by the government officials or any other individual who has been in charge of a formal position or he has encouraged or agreed explicitly or implicitly to conduct such acts". Thus, in its particular meaning, torturing is any sort of physical or psychological annoying or harassment which are committed by the state agents or the individuals in charge of public formal positions while doing their duties or as part of their occupation for acquiring information or confession from the culprit, but generally it is intended to mean any sort of heinous behavior and cruel treatment respective to the detainees including the culprit and the convicted individuals⁷.

Torturing and the other inhumane behaviors are forbidden in all the times including within penal investigations and it is not justifiable by any means, and no single individual should be subjected to torture, disdain and inhumane behaviors or punishments. This right cannot be regressed and it needs to be watched for everyone equally. Under no circumstances even at war times or threat to war, internal political instability, emergency situations this right cannot be suspended. Inhuman behaviors such as torture are actions which should be prevented, "if anyone should commit them there is a need for the doer of such deeds to be investigated and pursued and they should be tried. The judges and the lawyers should be cautious for any sign of torture or misbehavior against detained women or children. The constitution of our country takes a decisive and unconditional position regarding torture, according to the article 38 of the constitution "Torture, of any kind, in order to obtain confession or information is forbidden. It is not permissible to force someone to testify, confess, or swear an oath. Such a testimony, confession, or oath is worthless. Anyone who deviates from this article shall be sentenced in accordance with law". The violators of such a article should be punished according to the law principles. In such a principle it is emphasized that no use of force should be practiced and this is relying in the volition and free will sovereignty principle and respect for the human personality. Because use of force and power is naturally threatening and threatening acts are discredited legally, in line with this article 1262 of the civil law declares that "the confessor should be mature, wise, purposive and autonomous. Therefore, the confessions by the minors and maniacs in their insanity state and non-purposive and reluctant cannot be accepted and effective", "of course it appears that the article 204 of the penal procedure implying the allowance for hiring the witnesses and experts to perform investigation contradicts the aforementioned article⁸".

The enforcement mandate for preventing from torture has been vested in the law according to the last part of the principle 38 of the constitution and in this respect the article 578 of the Islamic punishment law enacted in 1996, meanwhile declaring that torturing is a crime, the punishment for committing such a crime has also been determined. In the above-mentioned article it is brought that "any of the government judicial or non-judicial servants or officials who physically annoy or harass an individual in the course of getting a confession should be sentenced to from 6 month to 3 years of imprisonment plus retaliation or atonement depending on the case and if any other person has ordered such an act, only the issuer of the order will be sentenced to the aforementioned custody punishment and if the culprit dies as a result of the harassment or torture the vice and the issuer of the order would be punished with a sentence of death punishment", of course "torturing can be actualized through annoying and tormenting the culprit psychologically but this topic has not been explicitly implied in the aforementioned article and it is imperfect in this regard, thus it seems that culprit's psychological harassment and torture for acquiring a confession cannot be included in the regulations therein, unless it results in the physical harassment and torturing of the culprit or be the origin of the physical harms⁹". On the other hand, the constitution expresses the idea of "any sort of torture" which can be taken to mean physical and psychological aspects.

According to the article 5 of the universal declaration of human rights "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Political and civil law international convention also in paragraph 3 of the article 14 declares that "anyone accused of committing any crime is warranted not to be forced to state testimony against him or herself or confess to his or her criminality. Also, based on the article 7 of the same convention "no one should be exposed to torture and harassment...."

2.3 The Right to Realize the Accusation in a Language That Can Be Understood by the Suspect or the Culprit

In the preliminary investigations before anything the culprit should be made aware of his or her accusation in order for him or her to be able to take advantage of his or her essential rights and defend him or herself and

⁷ Ardabili, Muhammad Ali, "a discourse regarding torture and its prevention", journal of law research, Shahid Beheshti University, Winter 1997 to summer 1998, p.105

⁸ Salimi, Muhammad, 2010, "human rights", Ghazam Qom, 1st ed., p.91

⁹ Hojjati, Seyyed Muhammad, 2010, "Islamic punishment in the current order", Dadsetan, 1st ed., p.578

through explanation of the charge the preliminary investigations start and before explanation of the charge the indicted individual is named “defendant” and “with the explanation of the charge the defendant changes to culprit and the utilization of the defending rights such as remaining silent and the use of a lawyer’s assistance are initiated¹⁰”.

Explanation of the charge is necessary in that it may provide the culprit with the possibility of rejecting the charge or charges s/he is being accused with and the mandates and warrants related to the defending rights can be workable and started and, on the other hand, the investigating judge can be allowed to resort to undertaking the necessary measures including issuing provisional injunctions. In this way, it can be said that explanation of charge includes the formal announcement of the criminal act or acts to the culprit by the investigating judge in a language and a method that can be understood by the culprit according to his or her specific conditions¹¹.”

After the culprit’s specifications and address have been inserted and recorded s/he should be informed of the charge. In explaining the charge the topic and the reasons for such a charge should be explicitly explained to him or her. Explanation of the charge should be carried out respective to the accused individual and in the preliminary investigation stage if the culprit has appointed a lawyer the explanation of the charge to the lawyer has not been allowed and culprit’s request of the lawyer is also devoid of legal validation but in case that it is in the expediencies of the lawsuit the culprit can be summoned or arrested in the presence of his or her lawyer and as it is common, for instance a subpoena can be sent to summon the culprit¹².

It seems in explanation of the charge that the culprit’s action is explained to him or her not the title of the crime committed by him. The title of the act is the title of the accusation and the recognition of such a title is in the judge’s discretion, the subject of accusation should be announced to the culprit on the investigation day for instance if a person has introduced him or herself as the law enforcement officer it has to be said that you have introduced yourself as the law enforcement officer and the expression of “impersonation” should not be uttered since it is a law expression and it is possible that the culprit may not be familiar with the law expressions, it is used from the article 194 that not the title of the accusation rather the subject of the accusation should be explained to the culprit¹³.”

The constitution in the article 32 regarding the explanation of the charge declares that “in case of being detained the subject of the accusation should be immediately announced with also mentioning the reasons....” And according to the articles 194 and 195 of the criminal procedure act the explanation of the charge is the responsibility defined for the judicial authority and s/he is responsible to explain the allegedly related charge(s) along with explicit utterance of the reasons in order for the culprit to be able to provide for his defending rights preparations, of course according to the article 48 of the criminal procedure act the court’s enforcement bodies should inform the culprit at the detention instant of the accused charge and the reasons for such an accusation in evident crimes for complementing the investigation and their entire measures and steps taken in non-evident crimes should be corresponding to the orders by the qualified judicial authority. Meanwhile explaining the charge it should be performed in person and in written form and explaining the charge to the culprit in a verbal and oral form should be avoided.

The reasons for explaining the charge should be explicitly expressed in a language which can be understood by the culprit (in case it is needed a qualified and free translator should be asked to do so), for example the culprit should not be absolutely informed that according to the testimonies of the witnesses you are charged with a crime rather the names of the witnesses should also be recounted because investigation from the witnesses have has taken place in the culprit’s absence and the harm imposed by the culprit to the witnesses could not have been possible before avowed by them and in the meantime it has to be pointed out here that questions from the culprit should be explicit and useful and the answers to the questions should be written as was said without any change, conversion and distortion and in case that the culprit(s) are literate they should be tempted to write the answers to the questions. Generally speaking, any individual accused of a criminal offence should be immediately made aware of the charges in a language s/he can understand and he should be explained about the topical issues and the verdicts regarding the basics of the accusation in details.

Part (a) of the paragraph 3 in the article 14 of the political and civil law international convention declares that “any person has the right to be immediately and in details and with the language s/he can understand become

¹⁰ Ashouri, Muhammad, 2000, “criminal procedure act”, v.2, Samt, 1st ed., p.104

¹¹ Ibid, p.104

¹² Mohajeri, Ali, 2004, “prosecution procedure in the public prosecutor’s office”, Fekr Sazan, 3rd ed., p.122

¹³ Ibid, p.122

aware of the nature and the reasons of his or her accusations”. It is worth mentioning that “the constitution and criminal procedure act contrary to the political and civil law international convention have not taken the explanation of the charge in details into consideration¹⁴”.

2.4 The Right for Having a Lawyer and Legal Assistance Enjoyment

Many of the people due to not being familiar with the prosecution system and not having mastery over the judicial laws and rules are not capable of adjudication of their own rights and filing a proper lawsuit and defending themselves optimally and they may not finally succeed after spending a lot of time and costs or they may get to their results of interest but after wasting abnormal and extraneous expenditures. “In such a specialized and scientific environment, it is very helpful for the parties (usually as culprits) to enjoy the defending facilities through the use of which it can be said that an equilibrium has been served between the parties of a claim. Electing a lawyer for the parties of a claim which can be regarding as solving the problem is enumerated as one of the preliminary rights given to everyone in all of the lawsuits¹⁵.”

Having access to a lawyer is a mean to the right to defend (for the culprit) and the right to file a lawsuit (for the personal plaintiff). Assuming such a right like many of the other prosecution rights is intended for the culprit and there has been and there is a great deal of concerns regarding this issue, otherwise the same as the right to have access to the file this is a common right shared between the parties and is not devoted only to the culprit¹⁶.

Besides respecting the right to have a lawyer for the criminal in the criminal procedure the victim of the crime also has a right to hire a lawyer to achieve his or her objectives. “Having a lawyer in all of the penal and legal lawsuits and claims is the right for everyone for the justice to be served”. Not all of the individuals are aware enough of the country’s rules and regulations. Many of the individuals cannot defend their own right particularly in cases the public prosecutors’ offices are equipped with legal advisors aware of and familiar with the law such as prosecutors, prosecutor’s attorneys and solicitors. Prosecutor and the prosecutor’s attorney as proxies and representatives of the people sue the individuals. The justice expediency is that the individuals can be defending the accused charges with the help of the informed experts and jurists¹⁷.”

The presence of the lawyer in the preliminary investigations causes a balance to be established and it is the weapons parity principle in the criminal procedure act, since the presence of the expert judges in suing and indicting, the private plaintiff, or his or her lawyers and the court’s enforcement bodies in the organization of the court who are there and motivated to support the social tights and the rights of the victim of the crime regarding the collection of evidences and reasons to against the culprit entails the attendance of an active and outstanding jurist besides culprit to defend his or her legal rights¹⁸.

Every individual has the right to have the lawyer s/he has appointed and every individual has the right to immediately have access to a lawyer as soon as he is to be deprived of freedom and/or meet with his or her lawyer. The culprit’s access to a lawyer in the investigation period can prevent from harming his or her defense rights and even in case the individual is in need of a lawyer and cannot afford having one the court has to provide him or her with the access to a lawyer and this is carried out through determination of a public defender by the prosecutor’s public office in criminal affairs or the vice lawyer introduced by the lawyers’ center.

Article 35 of the constitution asserts regarding the issue that “in all of the courts the parties have the right to select themselves a lawyer, and if they cannot afford to have a lawyer the facilities for determining and appointing them a lawyer should be provisioned. In this regard, the single article stating the lawyer appointment enacted in 09/11/1991 by the national exigencies council declares that “the parties of a lawsuit have the right to elect a lawyer and all of the courts which are hold legally and based on the law should accept a lawyer” and it is stated in the law of respecting the legitimate freedoms and preserving the citizenship rights enacted in 2004 in its article 3 that “the prosecutor’s public offices are responsible to observe the right to defend for the culprits and plaintiffs and provide them with an opportunity to take advantage of a lawyer of an expert.”

In article 5 of the criminal procedure act it is cited that the culprit should be granted the right to have access to a lawyer as soon as possible and in article 48 of the same law is it also expressed that with the initiation of the culprit being under custody s/he can request to have a lawyer and it is also stated in the article 90 that the culprit can be accompanied with a prosecutor’s attorney on his or her request in the preliminary stages of investigation.

¹⁴ Beyranvand, Reza, 2010, “the law enforcement bodies’ responsibilities regarding the citizenship rights, Faza, Qom, 1st ed., p.100

¹⁵ Hashemi, Seyyed Muhammad, 2011, “essential rights and political structures”, Mizan, 1st ed., p.338

¹⁶ Morteza, Najizadeh, Morteza, 2010, “impartial trial in criminal affairs”, the institution of City of knowledge law researches, 1st ed., p.257

¹⁷ Madani, Seyyed Jalal Al-Din, 2005, “essential rights and political institutions in Islamic republic of Iran, Paydar, 7th ed.

¹⁸ Beyranvand, Reza, Ibid, p.138

This right should be announced formally and explained to the culprit before the outset of the investigation by the solicitor and in case that the culprit has been summoned to appear in the court this right should also be inserted in the subpoena and announced to the culprit, but this is not an absolute and solid principle and there are exceptions incurred on the same law. For specimen under the notice to the article 48 of the abovementioned article 48 in crimes against national or foreign security and also the organized crimes the punishment to which includes the article 32 of the same law it has been declared that the parties should appoint their lawyers from among the formal justice department lawyers approved by the head of the judicial system in the preliminary investigation stage. It seems that by amending this subject the legislator has intended to limit the domain in some of the cases of course the legislator has also predicted an enforcement mandate regarding this issue. Before the amendment under the notice to the article 190 of the criminal procedure act in 2015 in case that such a right has not been explained to the culprit it can cause the entire investigations to become disvalued and after the amendment it is affirmed that this can bring about military punishment of the degree three and eight for the judge trying the lawsuit.

Article 11 of the universal declaration of human rights, although has no direct and explicit point to the right for having a lawyer which is regarded as a guarantee necessary for defense of the defendant but it is asserted that “anyone being accused of a crime would be considered innocent unless otherwise has been proved and s/he is tried in a court in which s/he has been provided with all of the guarantees and warrants necessary for defending himself or herself.

2.5 The Right to Remain Silent

One of the culprit’s citizenship rights in the process of criminal procedure is the right to remain silent or to avoid replying. The culprit has the right to stay silent in the investigations and forcing him to speak is legally of no use and value, so collecting reasons and evidences in this way is also invalid. The right to remain silent in the prosecution and trial stages is an integral part of innocence and it is an important guarantee for the right of not forcing the culprit to confess or testimony against him or herself, the right to remain silent during investigations is vulnerable in the individual under custody as a result of being accused to criminal acts since the law enforcement officials do their best to get the detainee confess or make assertions signifying his or her guiltiness and the culprit’s right to remain silent counteracts all such efforts.

Announcing the right to remain silent as one of the most important culprit’s defending rights has been taken to consideration in a great majority if the procedure acts of a great deal of advanced countries as an assignment not only for the judge but also for the police and from the early time the investigation has been started. In these countries in case that the culprit withdraws from such a right and explicitly affirms that s/he is ready to give answers of any sort and consequently to the insertion of such a withdrawal of the right in the investigation process verbal and being signed by the culprit any question within the framework of the law criteria is allowed¹⁹.

In Iran’s law system the right to remain silent has not been explicitly proposed in the constitution, but some principles this right has been implied in the investigation and prosecution stages, and according to the article 37 of the constitution “Innocence is presumed. The law does not consider anyone guilty unless the person’s guilt is proven at a qualified court.” and, on the other hand, according to the principle 38 of the aforementioned law “any sort of torturing for acquiring confession or information from the culprit is forbidden. Forcing an individual to testimony, confession or pledge is not allowed and such a testimony and confession and pledge is invalid and the violator of such a principle is to be punished corresponding to the related law.”

Article 197 of the criminal procedure act declares regarding the culprit’s right to remain silent that “the culprit can remain silent. In this case the orders of his refusal to answer to the previous testimonies will be written in and inserted in the process verbal”. Also in the article 192 of the recent law it is stated that the questions should be useful, explicit, and relevant to the charge and within its domain. Inductive questions or questions accompanied by deception, reluctance or coercion of the culprit are forbidden. Although the Iranian judges in Iranian law were not assigned with the task to announce and acknowledge the culprit’s right to remain silent until the enactment of the criminal procedure act of 2013, but it seems that with the enactment of the law described in the article 6 the culprit should be made aware of his rights and its warrants in the process of prosecution and this is what has been put on the judges’ shoulder and if the culprit stood silent before the judge and the questions posed by him or her s/he cannot be obliged to inevitably answer rather only his silence would be stated and inserted in the process-verbal.

Legally, the culprit’s silence cannot be deemed so much of a document signifying his criminality and according

¹⁹ Ashouri, Muhammad, “criminal procedure act”, v/2, p.106

to the current rules and acts of the law of our country such a silence is not deemed as offence, of course it appears that if there is enough reason indicating that the crime has been committed by the culprit or finds relevance with him or her the judges should explicitly and clearly announce and explain these documents, and then the culprit can refuse to answer the questions and defending him or herself. Therefore, the culprit's silence can be used along with the other evidences and document as suggestive of justifying his or her criminality.

In the international charter of human rights there has been paid attention to the culprit's right to remain silent and the announcement and explanation of such a right to the culprit by the judicial authorities and court enforcement bodies, part (G) of paragraph 3 in the article 14 of the political and civil rights convention states that such a right guarantees that the individual should not testimony against themselves or do not confess to their crimes.

2.6 The Right to Take Advantage of the Facilities and Sufficient Time for Defense Preparations

What seems to be necessary in a fair and essentially just trial is that all of the culprits accused of a criminal act should enjoy facilities and sufficient time to defend. To ensure that the culprits are provided with the sufficient time to defend, the judicial system needs to take circumstances and conditions into consideration that enables the culprit to prepare his or her defences in a reasonable period of time, since preparation for defence necessitates lots of time and in case that the culprit is deprived of such conditions the justice is not served in the prosecution and trial and this right is not only considered for the culprits but also for the culprits' advocates and pertains to the entire process of trial²⁰."

The due time or the recess time according to the mental and conceptual usage in the norms and law is the time that is bound to a start and finish during which the individual(s) are asked to perform a certain action including a right or assignment exclusively voluntarily and the addressee of the recess or the break is apt to start the action at anytime within the break time even on the last day in the last hour and in case that the addressee of the break fails to start the action within the due time or manages to start it during the promised time but falls short of finishing it in time the aforementioned action is envisaged as being accomplished and done²¹.

The right to enjoy the facilities and sufficient time for preparing defending documents and evidences is an important aspect of "the equality of the means and facilities". The sufficient time for preparing to defend oneself depends on the procedures nature and the real factors and status of each lawsuit including having access to the evidences and documents by the lawyer and the culprit side and the temporal constraints and legal limitations. Besides the sufficient time they need to have access to documents, evidences and anything deemed as necessary for preparing to defend oneself, this is a right which is also comprised of the right to have connection to a lawyer. The culprit's right to have free communication to a lawyer takes only the role of preparing to defend in the context of the political and civil rights convention and it particularly gains importance when the individual is under custody awaiting a sentence to be issued. In cases that the individual is detained without his or her lawyer being informed and in case that a public lawyer has been appointed for the culprit without his or her content are among the examples of violating and abusing such a right²².

If the culprit has not been given the sufficient time for preparing to defend including conversing with his or her lawyer and reviewing the documents, what has been considered by the judicial procedures is that because the sufficient time has not been provided the culprit can plea for a moratorium.

Based on the section 14 of the third article of the constitution "safeguarding the full-scale rights for every single man and woman and establishing fair judicial security for everyone and everyone's equality before the law", it seems that one of the means of safeguarding fair judicial security is the right to have sufficient facilities ad time for preparing to defend oneself by the culprit in proving his or her innocence or the punishment mitigation. In line with this, the article 171 of the criminal procedure act has considered at least a five-day respite from the announcement time till the trial time and the culprit's presence before the prosecutor and solicitor. After a subpoena has been sent²³ the culprit is bound to attend the court on the due date. In case that the culprit cannot attend the court on the due date as a result of a justifiable excuse described in the article 178 of the above-described law another subpoena should be sent again or it is waited until the justifiable excuse is resolved. In the other aforementioned cases the culprit can attend the court one time before the due date and inform the prosecutor of the reason why s/he cannot be present at the due time and acquire his or her consent and agreement in which case the investigator can extend the respite up to three days in case that the investigation process is not

²⁰ Fazayeli, Mustafa, 2010, "international criminal courts fair trial", city and knowledge, 2nd ed., p.430

²¹ Faramarzi, Ibrahim, 2011, "legal due times", jungle, 3rd ed., p.7

²² Fazayeli, Mustafa, Ibid, p.431

²³ R. K., Article 178 of the criminal procedure act

delayed. Of course, in case that the culprit stays absent and/or he cannot be within reach the subject of issuing a subpoena and summoning him or her to get present before the court and defend against the alleged charges can be conducted in the form of publishing an announcement in one of the widely circulated newspapers and based on the article 3 of the law of respecting the legitimate right and supporting the citizenship rights “the courts and the prosecutor’s public offices are obliged to observe the culprits and defendants and provide them with an opportunity to enjoy lawyers the universal declaration of human rights and experts advantages.”

In accord to the article 11 of the universal declaration of human rights “(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.” Part (b) of the paragraph 3 in the article 14 of the political and civil convention states that “in trying every criminal charge the culprit has the right to through perfect equity be enjoying at least the following guarantees ... having the sufficient time and facilities for preparing for defending oneself and establishing communication with his or her appointed lawyer.”

Therefore, the culprit should always be provided with sufficient time and facilities to defend him or herself and also s/he has to have access to the other documents and evidences deemed essential for him or to defend him or herself.

2.7 The Right to Have a Translator

One of the evident and common rights among the parties of a lawsuit is that if they are investigated with an intangible and incomprehensible language they should be provided with a free, qualified and skilful translator since it is envisaged as necessary for provisioning the fairness and justice conditions. Due to the fact that the right to have access to a translator and thus lacking to have such a right is more threatening to waste the culprit’s right, so it is reminded of as one of the defence rights mentioned above for the culprits and the necessary condition for a fair trial. Such a right is “only posited in cases that the culprit is found unable to make necessary and useful contact with the judicial court of the resort or being informed of the documents and evidences for instance he be not familiar with the language used in the court or the documents or in cases that the culprit lacks the faculty to speak or hear (concerning the deaf and dumb), however, freedom in coming and going, global trips, exchange of the documents and information in the today’s world are all suggestive of the importance of the translators than ever²⁴.

The right to have a translator is the main part of the personal defence right and the right to have sufficient time and facilities to defend. The right to freely gain access to the assistances of a translator should be available to those who cannot speak with or do not understand the court of resort’s tongue (other countries citizens or non-citizens or foreigners), although if the culprit is capable to speak with or understands the court’s language in an appropriate manner but prefers to speak with another language the authorities are not required to provide him or her with a free translator’s assistances²⁵.

According to the article 15 of the constitution “the formal speaking and writing language in Iran is Persian. The documents and the writings and the formal texts and textbooks should be written with such a language...” In line with this, articles 200 and 201 of the criminal procedure act assets that in times when the culprit cannot speak Persian and/or s/he is deaf or dumb a translator should be determined.

Translators like the other individuals involved in the lawsuit should observe impartiality in their writings and statements and translate the utterances and documents exactly literally in a correct manner and without making any change and avoid from exerting their own ideas and personal interests.

According to the part 3 and paragraph 3 of the article 14 of the political and civil rights convention “every individual who is charged with a criminal act is deserved to have the following warrants and guarantees through observing the perfect equity principle: having access to the assistances provided by a free translator in case that the culprit is incapable of understanding the court’s language or in case that s/he is not able to talk.” Therefore, every culprit being accused of a criminal offence has the right to enjoy the helps of a qualified and free translator and also s/he has the right to get his or her documents and evidences translated and it can be said that the right to translate is the main prerequisite to a fair and just trial.

²⁴ Najizadeh Zavvareh, Morteza, Ibid, p.337

²⁵ Taha, Farideh, Ashrafi, Leyla, Ibid, p.204

3. Conclusions

The existence of an efficient and competent judicial system is the necessary condition for the observation and watchfulness of the human dignity of the culprits in the process of trying the crimes and offences in the courts. Effective and qualified judicial formations need the observation of the principles under the shade of which the culprits can defend their rights. Observing such rights by no means should be taken as considering privileges to anyone, rather observing such principles in the procedures and trials cause us not to forget the individuals' humanity in confrontation with the lawsuit parties and the just and fair trial can be served regarding them. According to the above-mentioned subject matters many of the important and recognized principles of the ordinary judgments have been predicted in the proposed rules and acts of the law and all of the existing principle in the international documents including the universal declaration of human rights, the political and civil rights convention are existing in the Islamic Republic of Iran's law and enacted internal regulations and are focused on and taken into consideration by the legislators and even there are enforcement mandates predicted for them and we are not faced with any statutory vacuum, however, there are in some cases uncertainties and regulatory shortages which cause the ordinary trials and judgments subject to some doubts and such cases, albeit very few, should be attended to and corrected parallel to having a competent judicial court through taking international documents into consideration.

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