

Position of Citizenship Rights in Criminal Procedure Law Enacted on 2014

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Abstract

Citizenship rights is a legal term which has several definitions in diverse social and ideological schools; in some cultures its political and social aspects are emphasized more and terms such as nationality and voting right are mentioned and there is no theoretical agreement on it. But generally it can be said that citizenship rights are a collection of legislations and laws intended to protect human personality and dignity in all judicial-political and social fields and a citizen enjoys citizenship rights through living in a special geographical region and by virtue of the relationship existing between he/she and the ruling government. Based on this approach citizenship rights branching out the basic laws of every country, lay a responsibility upon both the citizen and the government and are also entry into force and performance guaranteed such as observing privacy, environment protection and so on.

Keywords: citizen, citizenship rights, fundamental rights, privacy, specific country, human dignity, human rights, nationality, national rights

1. Citizenship Rights and Its Instances

One of the social, political and legal components of modern state in contemporary world is the position, rights and privileges of citizens. Following social changes and political revolutions in the past two centuries and collapse of foundation of authoritarian regimes and appearance of novel concepts in political and legal literature, a new era emerged in the human history. Emergence of legislative assemblies, separation of governmental forces, independence of the judiciary, restriction of political power and appearance of basic laws as a general convention between political government and citizens opened a new horizon in regulation and clarification of mutual relations between government and citizens and made the citizens' rights in basic laws of new governments to have a preferential position

Basically discourse of citizenship rights belongs to a new era of life, cognition and political management and this literature does not have a long history in legal system of countries such as Iran. It can be said that these kinds of topics have entered Iran's legal system after the Constitutional Revolution.

In ancient Greece and Rome the term citizenship rights was used but the meaning range of the concept was restricted and used to refer to a special class; for instance women or slaves were not accepted as citizens¹.

According to the statements it can be said that the concept of citizenship rights is a modern concept and it includes the individuals living in a geographical territory of a government-country and in return of the responsibilities they take, the government recognizes their rights and freedoms².

In regard of the foundations of citizenship rights four separate styles can be counted to explain them as following³:

A) Classic tradition (freedom-oriented style): this tradition emphasizes on the individual's position as basic element of society; in other words it focuses on individualism. This classical tradition is considered as the first

¹ Gorji Azandariani, Ali Akbar, In Attempt of Fundamental Rights, Tehran, Jangal Javdaneh House of Publication, Second Volume, 2009, p. 97

² Gorji Azandariani, Ali Akbar, In Attempt of Fundamental Rights, ibid, pp.97-98

³ Ibid, p.98

generation of citizenship rights and emphasizes on “right-freedoms”. It also focuses on privative dimension of freedoms and takes into consideration the non-intervention of government. Declaration of Human Rights and Citizenship of 1789 of France is an example of classic tradition and first generation of citizenship rights⁴.

B) Second tradition (republican style): this style asks the government to take a number of the measures in order to guarantee rights. In other words this group of rights cannot be achieved without interventionist or demonstrative measures of governments. Preface of 1946 Constitution of France states citizenship rights in republican style in which human dignity, having the right of a qualified life, a job, political asylum and so on are identified⁵.

C) Third tradition (social-cultural style): this style was founded by Hiter and Timer; their approach aimed to criticize the previous two styles. They believed the first style was individualist and the second style was highly community oriented. This means that in the first style we are faced with indulgence of individual rights and freedoms while in the second style the individual is empty of human dignity. As Degger states in combinational traditions such as republican liberalism tradition, the liberalism should not be interpreted as egoism. This tradition tries to combine the three elements of individual independence, collectivist virtue and rights⁶.

In regard of classification and instances of citizenship rights various ideas are given in works of lawyers⁷. But taking into consideration that our discussion is about investigating citizenship rights in Supreme Court Vote, therefore the following classification is chosen: 1- civil and political rights: this class includes cases such as freedom of thought, freedom of religion, equality of citizens (regardless of ethnical identities, gender, color, race and language), inviolability of prestige, life, housing and job of individuals, prohibition of inquiry of beliefs, freedom of mass media, protection of individuals' privacy, freedom of political communities and assemblies and protection of minorities' rights. 2- Economic, social and cultural freedoms and rights: freedom to choose job, to have a desired life, social security, free and qualified education, the right to have a house suitable with every individual's requirements, food, clothing and health center. These are all part of demanded rights which are closer to the second tradition. 3- legal rights: legal rights include the rights to be recognized for the citizens in a fair and just trial and the right of petition is its primary basis. In this class cases such as the following ones are recognized: the right to access a fair court, impartiality of the judiciary, inclusion of right to defend for both litigants (such as having a lawyer), trial in open court, logical and fair respite.

In regard of resources of citizenship rights and a number of important resources of assuring citizenship rights the following descriptions are given:

1) Constitution

In Iran the Constitution as the foundation of country's legal system is considered the major source and basis of citizenship rights. Various principles of this right guarantee nation rights against government and also assure citizenship rights. From among the principles monitoring citizenship rights the following cases can be mentioned⁸: A) Social-political rights of citizens: the sixth paragraph of Article III of the Constitution as “elimination of any type of tyranny and monopoly” and paragraph seven of this Article as “providing political and social freedoms” and attempt of the state to utilize all facilities for “public participation to determine their cultural, economic and political fate” as important responsibilities of the state and government, are among the cases that the legislator has portrayed social, political and legal foundations of people; B) economic rights and social welfare: the right to choose a job and freedom in choosing it (Article 28), to have a suitable house (Article 31), immunity of job and house of individuals against violation (Article 22), respect for private ownership (Article 47), to have social security (Article 29) are a number of cases the legislator has considered as economic rights and social welfare. C) Cultural rights: an example of cultural rights stated in the Constitution is the right

⁴ Gorji Azandariani, Ali Akbar, In Attempt of Fundamental Rights, ibid, p.98

⁵ Ibid, pp.98-99

⁶ Ibid, pp.99-100

⁷ For example Dr. Bijan Abbasi in his book titled “Basics of Fundamental Rights” has classified freedoms and rights into four classes as following: rights of the first generation including civil and political rights; rights of the second generation which are named economic, social and cultural rights; rights of the third generation or correlation rights and finally rights of the fourth generation including bioethics and so on. (Abbasi, Bijan, Basics of Fundamental Rights, Tehran, Jangal Javdaneh House of Publication, Second Edition, 2010, Pp.263-264. On the other hand the late Dr. Gazi in Obligations of Fundamental Rights has classified the most important rights and freedoms into four classes (freedom of action, freedom of thought, freedom of assembly and economic and social freedoms). Gazi, Abol-Fazl, Obligations of Fundamental Rights, Mizan House of Publication, 24th edition, 2005, Pp.144-158.

⁸ Masti, Mehran; Fallahi, Abol-Gasem, “A Look at Citizenship Rights with an Emphasis on Legal Aspects”, Journal of Bar Association, New Period, Spring and Summer, 2010, No 17 & 18, Pp.65-67.

given for different minorities to use their languages in mass media and teach their literature at schools along with Farsi language. Moreover paragraph 3 of Article 3 of the Constitution emphasizes on the free education for everyone in all classes and also facilitation of higher education. D) Legal rights: the major purpose of citizens' legal rights is creating legal security for members of society. Paragraph 14 of Article 3 of Constitution explains that individuals' rights should be provided comprehensively and fair legal security should be created and also everyone should be equal before the law. Article 4 states the codification of all civil, criminal, financial, economic, cultural, military, political and other kinds of rules on the basis of Islamic standards; Article 20 states the protection of all people including men and women by the law; Article 21 states the creation of a qualified court in order to preserve family basis; Article 32 states the prohibition of arrest and detention without a warrant of law; Article 33 states the prohibition of exile or compulsory inhabitation except by warrant of law; Article 34 states the right to have an access to a qualified court and litigation for all people of the nation; Article 35 states the right to have an attorney; Article 37 states the presumption of innocence; Article 38 states the forbiddance of torture and force to extract confession, testimony or acquire information; Article 39 states the forbiddance of affront to the dignity of the ones arrested, detained, imprisoned or exiled; Article 90 states the right to complaint the work of the Assembly, the Executive or the Judiciary; Article 165 states that the trials are to be held openly unless it is detrimental to public morality or discipline; Article 169 states that No act or omission may be regarded as a crime with retrospective effect on the basis of a law framed subsequently; Article 171 states that if the individual suffers any moral or material loss as the result of a default or error of the judge or government, the defaulting judge must stand surety for the reparation of that loss.

2) Fourth and Fifth Development Plan Act

2-1 Fourth Development Plan Act: the citizenship rights are stated in Article 100 and 130 of this Act as a duty to the government and Judiciary. Charter axes are as following: a) public education of obedience to the law and promotion culture of discipline and respecting law and citizenship; b) providing freedom and protecting votes of people and guaranteeing freedom of selecting and being selected; c) guiding social-political activities towards legitimate processes and supporting and guaranteeing security of legal communities and activities; d) providing the required freedom and security for growth of social communities in the field of protecting women and children's rights; e) promoting unifying and respectful ideas in regard of social groups and diverse ethnic groups in national culture; f) protecting individuals' privacy and g) promoting feeling of social security among people in society.

2-2 Fifth Development Plan Act: this Act is also considered by the legislator comprehensively in form of legal rights as instances of citizenship rights. Following some parts of it are mentioned as required:

The Article 211 of the Act states that: a) in order to reduce criminal acts and claims, to create legal police, to standardize guarantee of criminal performances and to replace guarantee of effective and updated non-criminal performances such as order, disciplinary, civil, administrative and restorative, the Judiciary is responsible to provide the needed legal bills at most until the end of the first year of plan so that it is given to the Assembly by the government; b) while executing overall policies of the system in judicial affairs (paragraph 12), the financial, organizational and employment requirements of the Judiciary, according to Articles 156, 157 and 158 of Constitution, must be provided in such a way that annually 10 percent of the existing vacant posts enacted in the end of 2009 are completed.

3) Iran's 20-year vision plan: in first paragraph of this document preservation of citizenship rights and dignity is recognized as an accessible ideal.

4) Act of respecting legitimate freedoms and preserving citizenship rights: this Act considers that the rights and freedoms written in Iran's Constitution are definite and therefore is about to protect them; the content of it is related to legal defense of Iranian citizens against trials and court officers.

2. Guarantees of Citizenship Rights in Preliminary Research and in Trial Stage

At this part of discussion according to the law on criminal procedure enacted on 2013, the other instances such as forbiddance of torture, forbiddance of desecration, the right to silence, observing the principle of equality and or the principle of open trials are taken into consideration.

Article 90 of the law on criminal procedure enacted on 2013 states that: "preliminary research is a set of legal measures taken by the interrogator or other judicial officers in order to preserve marks and signs and collect reasons of crime occurrence, detection, finding out and preventing the escape or hiding of the accused."

One of the other innovations of the new Act is separating the role of prosecutor from the role of investigator; because according to Article 92 and its subsequent note doing the preliminary research of all crime is done by the

investigator and in special conditions is done by court magistrate or by prosecutor and in some cases by assistant prosecutor. It should also be mentioned that the role of assistant prosecutor is still used for cases such as referring and presence in the court⁹.

But Article 265 of the law on criminal procedure enacted on 2013 states that: “if the act is considered a crime and there is sufficient evidence to assign crime to the accused, the investigator issues arrest warrant to the trial and....”. Therefore changing culpability warrant to arrest warrant is one of the other innovations of the new Act. The reason is that court is the reference for doing research and until the time that a definite warrant is not issued for condemnation of an individual it is not possible to announce his/her culpability or non-culpability; because a mistake taken in this field is contrary to the principle of presumption of the innocence. According to this principle all people are assumed to be innocent¹⁰.

A number of mistakes were corrected in the new Act and the term “attorney” is repeated more than 80 times which is indicative of special attention of legislator to necessity of attorney’s intervention in trial process. In Article 190 of the law on criminal procedure enacted on 2013 intervention of attorney in preliminary research is predicted. In such way that the accused has the right to have an attorney from being under supervision until preliminary research is over¹¹.

a) Presumption of innocence and effects related to it: taking into consideration the importance of presumption of innocence as one of the major instances of guaranteeing citizenship rights that must be considered in both stages, first the meaning, history and legal position of presumption of innocence are analyzed and then its effects are analyzed that can be found in instances such as right to the silence, immunity from any kind of threat and torture, having the right of last defense, silence of the condemned and also as another effect of presumption of innocence is personal freedom during preliminary research and the individual’s arrest is bound to exceptional cases with specific conditions due to unique and limited social interests.¹²

In this regard in the law on criminal procedure enacted on 2013 it is stated that:” the presumption is innocence. Any kind of measure that limits, deprives freedom and entry into another’s privacy is not allowed except by warrant of law with observation of provisions and under supervision of judicial officer; and in any case these measures should not be offensive to the individuals’ dignity.¹³

From among the effects of presumption of innocence the following cases can be mentioned: the right to silence according to which “the accused can be silent; if so his/her refusal of giving answers or signing the statements should be written on meeting paper.”¹⁴, immunity from any kind of threat or torture, having the right of last defense, silence of the condemned after the verdict is issued regardless of the type of charge and crime for issuing an appropriate decision makes the social-humanistic dimensions of the crime being neglected.¹⁵ Therefore the right to protest at the conducted research, warrants and issued sentences are among other defensive rights of the accused. The right of the accused to protest at these cases is predicted in Articles 205, 33 and 232 of the law on criminal procedure¹⁶ and in many Articles of the new Act the right to protest is mentioned: the accused that is to be released on bail I introduced to the detention section until the bondsman is introduced to bail is given; but if arrested the accused in 10 days from the date of notification of the investigator, can protest at the warrant leading to detention or non-acceptance of bondsman or bail¹⁷.

In Article 38 of Constitution, the forbiddance of getting confession by resorting to compulsion and force is mentioned openly as well. Article 129 of the previous law of criminal procedure recognized the right to the accused that no judicial or disciplinary authority cannot force the accused to confess a crime or an act he/she has

⁹ Articles 23, 88, 92 and 451 of the Law on Criminal Procedure

¹⁰ Article 4 of Law on Criminal Procedure enacted on 2013 and Article 37 of Constitution

¹¹ Articles 48 and 190 of Law on Criminal Procedure enacted on 2013

¹² Gol Khandan, Samira; Khosravi, Hussein; Rajabi, Akbar; Khalili, Davood; “ Comparative Investigation of Effects of presumption of Innocence in Preliminary Research in International Documents of Iran’s Criminal Law and other Legal Systems”, Islamic Law and Jurisprudence Research, Jurisprudence and Foundations of Islamic Law, Summer of 2010, Sixth Periodical, No.20, P.115

¹³ Article 4 of Law on Criminal Procedure enacted on 2013

¹⁴ Article 197 of Law on Criminal Procedure enacted on 2013

¹⁵ Najafi Abrand Abadi, Ali Hussein, “ The Approach of Criminology to the Law of Respecting Legitimate Freedoms and Protecting Citizenship”. Journal of Ta’ali Hugug, 2007, p.51

¹⁶ According to Article 33 of the Law on Criminal Procedure enacted on 1999, the accused could protest at the detention in 10 days and according to Article 232 of the Law the condemned had the right of protest at the issued sentences.

¹⁷ Article 226

not committed or force him/her to lie against himself/herself¹⁸; because “.....empathic questions or deception or compulsion of the accused are forbidden.” And “.....if the accused refuses giving answers.....” only “.....his/her refusal is to be written on meeting report”¹⁹ without being able to “force the accused to confess culpability or witness against himself”²⁰.

Regardless of the issue that in inquisitorial system silence of the accused is a license to get confession with torture²¹, but getting confession, information, testimony and sworn must be done in a safe manner and with person's will. Therefore any confession, information, testimony or sworn taken by force, torture and threat and even without having the feeling of any kind of stress, contempt and threat²², whether it is taken undesirably and suddenly by a police officer or is a permanent procedure²³, it lacks legal validity and the culpability on the basis of such a confession can be nullified²⁴ and courts are obliged not to take it into consideration. Forcing the accused to answer questions while being interrogated is a clear instance of suppressing defensive rights of the accused and is opposed to the principles and standards of a fair trial or a just war between government and the accused²⁵; the compulsion and force is done by physical or mental torture. This is while torture of the accused is strongly forbidden both in domestic law and in international and regional documents and criminal enforcement guarantee is predicted for it. Of course reaction of governments toward torture is not the same; the reason is that their standpoint in regard of torture and rough behavior is affected by the culture and tradition of their societies. Nevertheless, negating it is a general rule²⁶.

3. Conclusion

According to the points investigated and analyzed in the present article it became clear that the concept of citizenship is considered as a position in an approach to civil society (normal or modern) according to which it provides conditions of individual's enjoyment of rights and power.

In fact function of concept of citizenship rights is development and expanse of regulations that organizes all activities, actions, desires and economic, political, social, cultural and legal needs of people and prevents being cruel and oppressing the citizens specifically in the field of criminal law which is called spoiling rights of the accused.

From among the instances of citizenship rights in legal field cases such as presumption of innocence and right to have attorney in all phases of trial can be mentioned. Moreover under the important presumption of innocence other cases such as right to silence, explaining the charge, prohibition of arbitrary detention, forbiddance of torture and threat can be investigated. On the other hand in regard of the right to have attorney besides focusing mostly on this right, other principles such as openness of trials can also be mentioned.

What is certain is that in the Criminal Procedure Law Enacted on 2014, although the legislator attempted to develop guarantees of citizenship rights (such as Article 48) but in Notes of the same Article and in other Articles such as 190, a number of exceptions of vague cases are expressed that paves the way to criticize this Law. Therefore it can be said that rights of the accused especially in preliminary research in cases such as right to silence has developed and on the other hand although in trial phase positive points can be seen and some developments are gained but in the fields such as political and security crimes, the legislator has been ignorance to the presence of Jury.

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