European Online Journal of Natural and Social Sciences 2014;
vol.3, No.1, pp. 164-175 ISSN 1805-3602 www.european-science.com

Examining defense rights of the accused at the stage of preliminary investigation in Iran laws (with a human rights approach)

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Received for publication: 27 November 2013.
Accepted for publication: 20 February 2014.

Abstract

Preliminary investigation is one of the most important stages in Criminal Procedure which has a major impact on process of verdict issuance. Carrying out an appropriate preliminary investigation may guarantee achieving criminal justice. Thus, the legal principles governing the preliminary investigation stage have a significant value and status; so that, states in their criminal procedure codes, dedicate special parts to it. In addition to national laws, international human rights documents also have specific attention to the accused rights in the face of judiciary authors. This is because violating the individual rights at different stages of criminal trial is possible. As mentioned above, legislators of many states have recognized the legal principles governing on preliminary investigation stage. Iranian legislator is not an exception, too. This article tries to answer how the accused rights at the preliminary investigation stage are guaranteed. In order to answering this question, present paper seeks to deduct legal principles from Iran's domestic law that guarantees the rights of the accused at the stage of preliminary investigation. Furthermore, these principles have been evaluated in international human rights instruments, too.

Keywords: fair trial, preliminary investigation, the right to defense, the right to access a lawyer, human rights instruments, the right to last defense, right to silence.

Introduction

Preliminary investigation is a stage of criminal proceedings that, in its broad sense, continues from the moment of Crime detection in different ways, to issuance a decision of (prohibiting prosecution, dismissal or, culpability), and setting an indictment by prosecuting attorney. Its importance is because; at this stage the crime is recently happened. Thus, it can be better provided the truth finding ways and technical recognition. This is because, the likelihood of the accused fleeing is reduced and the reasons and evidence to prove or not prove will remain intact (Javanmerad Behrooz, 2012, p. 148). Preliminary investigations are a set of actions and inquiries made by juridical officers, either directly or by order of and referral to the judicial authorities, or by investigating judges as well as other competent judicial authorities, in order to facilitate and prepare the reasons including evidence of the crime and the reasons in favor of the accused, regarding the principle of innocent presumption, and its main purpose is to prepare filing and to facilitate and expedite proceedings in court (Ashoori Mohamad, 1999, p. 10)

By examining the international human rights instruments, we conclude that some rights are the integral element of social life which are imbued with the essence of human being. Among criminal laws, criminal procedure plays a major role in survival and stability of the society. It is necessary in preliminary investigation stage, existing some principles to ensure the defensive rights of the accused. In The legal system of the Islamic Republic of Iran, there are also different rules in context of accused rights in preliminary investigations that ensure his rights in this stage. This paper seeks to identify these rights by a comparative perspective with the international human rights system.

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For this purpose, the accused rights recognized in Iran's penal code are considered. In addition to Iran's domestic law, we will scrutinize these rights in international law instruments.

Principle of the right to defend oneself

Issue of the accused right to defense, is one of the cases which has provided in the human rights instruments and criminal procedure in most countries. On one hand, a principle is recognized as the presumption of innocence which is based on the notion that no one is guilty unless the contrary is evident. so by accepting such right, individuals must be given the right to defend against the charges and to prove their innocence. One requirement of the right to defense is that person must be informed of (his/her) charge, so that he can make a complete defense of (him/her) self. Indeed, protecting the accused right to defense, is a defense of individuals natural rights such as right to life, the presumption of innocence and so on.

Basically, the Constitutional and Normal laws of the states should not and can't breach such rights or limit them to ways contrary to reason and the principles of fair trial; Hence, the legislator is required, along with obligation to protect the natural rights, to recognize the accused right to defense and its requirements as ensuring these rights, and to make seriously protection of them. Here, we present one definition of the right to defense, while numerous definitions of this concept have been made. accused right to defense refers to indivisible domination with the personality of any individual in society that has been recognized and protected through the state's legal system which Based on it, a person can repudiate or reject the criminal behavior attributed to (him/her) by all legal and legitimate possibilities in Law enforcement and judiciary authorities (Moazenzadegan Hasan, 2010).

Accused right to be silence

To respect the presumption of innocence, both in legislation and judiciary levels, is one of the basic principles of criminal law and fair trial. When a person is faced some charge, judges and investigation officers have obligation to collect and gain evidence, in a full impartial manner and by considering all circumstances, and by ensuring defensive rights of the accused. Basically this means that, the accused has no duty to present evidence in order to repudiate a charge. It is the investigating authority that shall achieve proving evidences of the accused culpability, through legal ways and channels. One of the major and still controversial issues, is the discussion of the accused right to remain silence during proceeding process and particularly at the preliminary investigation stage.

In fact, it must be seen that, the accused right to remain silence during interrogation and judicial inquiry, to what extent is accepted and supported. And basically whether such a right exists, and if the answer is positive, to where extend its limits, and if we can consider the accused silence as Symmetry of (his/her) guiltiness, and that, what duty have the investigating authorities in regard of respecting this right?

In response to the above questions a hypothesized suggested that the accused has no obligation to prove (his/her) innocence and, that the investigating entity must prove culpability. Notwithstanding the legal defects with respect to provide and ensure silence of the accused as a right, he may remain silent in response to the questions of judiciary authority. Disrespecting it and excesses of the investigation organs in imposing pressure, taking confession by using empathic and misleading methods, rather than specialized scientific methods, are the Best examples of violation of the accused right to be silence and, consequently, would undermine the presumption of innocence. In international instruments, and particularly in human rights treaties, there has been an attention to this right of the accused, so that he can use freely his choice powers to answering the questions or to refuse it. According to paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights (1969) : "in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... g) Not to be compelled to testify against himself or to confess guilt." In a similar way, paragraph 2 of article 40 of the Convention on Child Rights (1989) called on the member states to consider this issue, in guaranteeing the children defensive rights before judiciary authorities. Statute of the international criminal court (1998), is another document in which, the accused right to be silence is stipulated. According to articles 55 and 67 of the Statute, the accused person is not compelled to testify or to confess guilt, and he can remain silent, without causing this silence

to guilt or innocence implication (Sluiter, Gцran, 2013, p. 76) Therefore, the impossibility of compelling the accused to confess or to testify or to right of silence before the police and judiciary authorities has become a customary rule in international law to which all states have to adhere.

According to Article 578 of the Islamic Penal Code of Iran, anyone who tortures the accused person, is accused of torture and if proven torture guilty, will be punished. Article 125 of the code of the Criminal Procedure of Iran provides that in case the accused remains silence, his silence is noted in record. Hence, the legislature in this article has recognized implicitly the accused person's right to be silence. So in the case of silence of the accused, the investigating judge is obliged to exercise other ways to achieve information and discover the truth (Khaleghi Ali, 2009, p. 177) As noted above, this right is also ensured in international human rights instruments, even in this respect, he goes beyond and states that: he (accused) legally has the right to be silent and to not answer to the investigating judge (Khaleghi Ali, 2009) With the phrase of " the interrogator notes that he be careful of his words ", Article 125 in fact has considered not using of right to be silence by the accused, and in the case the accused be silence and refuses to answer the questions, has authorized the interrogator only to noting the accused refusal of answering, in record. Nonetheless, it must be stated that the former criminal procedure, had considered only the first stage of "right of silence" and had granted to the accused a right of being silence in the face of the interrogator's questions, but it had not recognized declaring the right of silence to accused as a legal duty, and had not considered effect of the accused silence in discovering guilt. After the Islamic Revolution of Iran, in accordance with Article 129 of the Criminal Procedure Code of General and Revolutionary Courts: (the Judge shall ask exactly about the accused identity and characteristics (name, father's name, family, age, occupation, spouse, child, nationality) as well as his address (city, ward, etc) so that he can easily delivered the summons and other papers, and shall note the accused being careful of his statements, and then shall directly inform him of charge issue and its reasons, then he shall begin the investigation. Questions should be useful and clear. Empathic or inducible Questions or duress or coercion of the accused are forbidden. If the accused refuses to respond, his refusal shall be incorporated in the record...)). According to Article 129 of the code of Criminal Procedure of General and Revolutionary Courts: (If the accused confessed to the crime and his confession is explicit and leaves no place to any doubt, and the Contexts and circumstantial evidence also confirmed this, the court shall proceed to verdict, and in case that the accused denies or remains silent or when there is a doubt in confession, or where there is an inconsistency with other evidences, the court shall launch to investigate the witnesses and knower's and the accused, and also proceed with other evidences)). Finally, under Article 197 of the code of Criminal Procedure of General and Revolutionary Courts "the court will ask parties and witnesses and knower's, any required question to resolve disputes and to clarify the issues. If the accused doesn't answer the questions, courts will go on proceeding without compelling him to response."

According to Section 11 of the single article of Act on respecting the legal freedoms and maintaining the rights of citizenship : "Every accused has right to refuse answering the questions of the crime detection and prosecution authorities, which have no connection to the crime and the prosecution, and is relevant to his personal and family issues." This article has restricted the right of silence to illegitimate and improper questions, while the right of silence as noted above, is more general than such questions, and exists in face of legitimate questions and in respect of preserving rights of the accused person.

3) The right to be informed of the charge another right of the accused persons at the stage of preliminary investigation is that they have to be informed promptly of the charges and detention reasons. to charge someone and informing it, is one of the most important issues in Criminal Procedure Which observing its rules in any legal system, indicates the importance of preserving and protecting citizen's and human rights. Like many other rights of the accused in criminal law, right to be silence is derived from the presumption of innocence. Thus, the judicial authority is obliged to prove guilt of the accused. The most significance effect of informing promptly the accused about the arrest or detection is that he is able to challenge the legality of his detention. Informing the charge, is illustration and explanation of the committed crime and its legal consequences, in way that the accused is fully informed of his juridical and legal obligation status, and make preparation to defense at different stages of proceeding. Some consider informing of

charge to the accused as the Start point of preliminary investigations and define it as: to be informed of the charge means the accused being informed of the notion of the charge by judicial bailiffs prior to starting investigation, and in order to being aware of actions in respect of defending his legal rights. In other words, the purpose of informing the charge is that any accused be informed of the nature of the criminal charge against him before beginning investigations, so that he can provide sufficient defense means" (Nouruzi Nader, 2010, p. 170)

Therefore the accused should have full information about his detention reasons. According to The Human Rights Committee, in case which the accused person is merely aware of arresting due to committing a crime of murder, and which during a few weeks he can't achieve details of his file, and even is unaware of victim identity, a violation of paragraph 2 of Article 9 of the International Covenant on Civil and Political Rights (1969) is occurred. (Kelly and Jamaica, 1991) So in international law, informing the charge should be full and accompanied by details, and it is not sufficient to merely inform the generality of detention. In addition to the Human Rights Committee, European Court of Human Rights has also raised the issue. The European court of human rights believes that the charge shall be informed in simple language, so that the accused be fully and obviously aware of his charge (Saber, Mahmud, 2009, p. 153) Concerning the governing principles on criminal trial, adherence to the international instruments in this field can provide further guarantees to the accused. The international human rights instruments also have provide some rights relating to informing the charge.

Paragraph 2 of Article 9 of the International Covenant on Civil and Political Rights provides that: "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Also, in accordance with paragraph 3 of this Article; anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. One of the governing principles on informing the charge is its promptness. In international instruments, in paragraph 2 of Article 9, and subparagraph (a) of paragraph 3 of Article 14 of the international Covenant on civil and political rights, in Article 5, paragraph 2 and subparagraph (a) of paragraph 3 of Article 6 of the European Convention on human rights, it is stated about promptness of informing of charge to the accused by judicial bailiffs, and the subparagraph (b) of paragraph 2 of article 8 of this convention, provides the promptness of informing the charge by judicial authorities, with the title that informing the charge must be prior to investigation. As stated in the subparagraph (a) of paragraph 3 of article 14 of the international covenant on civil and political rights, and in the subparagraph (a) of paragraph 3 of article 6 of European convention on the protection of human rights, "everyone charged with a criminal offence shall be entitled to be informed promptly and in detail in a language which he understands of nature and cause of the charge against him". The rationale of the Right to exact informing of the context, sort, and degree of the charge which must be made at the preliminary stages of prosecution and investigation, is that the accused be able to prepare adequate defense, and which an equality of arms is created between the claimant and the accused. The Necessity of informing the charge requires that the legal provisions governing the charge be represented and provided. So it is necessary to submit the list of witnesses, and evidence of the claimant, and the copies of the witness's statements and even the statements of the accused at the early stages of investigation, and generally to submit the copies of all documents' and evidence that are reasons for the claimant's claim. The logic for this guarantee, is understood by assistance of the content of deducted of the subparagraph 6 of paragraph 3 of Article 14 of the international covenant on civil and political rights, and the subparagraph 5 of paragraph 3 of Article 6 of the European Convention about using freely a translator, requires that the documents and evidence regulated in an unfamiliar language for accused, be translated at the expense of the court or Prosecutors. Although it can be said that such a right only relates to the documents and evidence effective at defense and the accused can't ask for translation of all documents existing in the file.

According to The Statute of the International Criminal Court, any person who is arrested or detained shall be informed immediately of the reasons causing his deprivation of freedom. The main

purpose of this requirement is that the accused be able to object the validity of detention. Hence, the presented reasons must be obvious and include a clear explanation of the legal and factual basis of arrest or detention. In other words, the right to inform the accused of his charges and its reasons is considered as respecting his defense right and making a balance between him and the claimant. In Iran's legal system, also its necessary to inform the accused of charge, and this issue has been identified by the most important legal document of Iran, i.e. the constitution. Article 32 of the constitution states: "No one may be arrested except as required by the law and the manners defined therein. When detained, the accused must be informed immediately in writing of the reasons of the charges against him or her. Within a maximum of 24 hours, his or her preliminary file must be placed before competent juridical authorities and trial proceedings must be initiated as soon as possible. Violators of this principle shall be punished according to the law". the article 129 0f the code of criminal procedure, has predicted informing the charge, in Iran criminal laws. According to it: "the Judge first shall ask exactly about the accused identity and characteristics (name, father's name, family, age, occupation, spouse, child, nationality) as well as his address (city, ward, etc) so that he can easily delivered the summons and other papers, and shall note the accused being careful of his statements, and then shall directly inform him of charge issue and its reasons, so investigation will begun. Questions should be useful and clear. Empathic or inducible Questions or duress or coercion of the accused are forbidden. If the accused refuses to respond, his refusal to be incorporated in the record.

Note 1 – the judge shall inform the accused at first that his declared place as (his/her) residence, is supposed as legal residence, and if any changes in this residence happens, the accused is obliged to declare the new residence so that the summon can be delivered.

Otherwise, subpoenas will be sent to former residence. It is not acceptable changing residence in order to delay or avoid in a way that declaring the summons is difficult, and all papers will be proclaimed to the former situation. Proceeding authority will recognize this issue. In terms of determining residence of the claimant or plaintiff, observing this provision is required.

Note 2 – violation of notifying officers in doing their duties, or their wrong reports on the matters relating to their duties, shall be punishable by law. "This notification and action is called 'to inform the charge' or 'to inform article'. Thus, the investigating judge must assert explicitly and clearly the charges cases, and then begins his investigation.

The right to immediately presence before the judicial authorities

The presumption of innocence is considered as one of the most important general principles and rules, which is guiding the criminal law. Now, through developing the criminal innocence principle in modern trial systems, it is expected of the principle to ensure the security sense, and freedom of individuals and society members. In other words, the purpose of the concept of the presumption of innocence is to give immunity to individuals against aggressions of others, especially those who in power, and representatives of public forces. What is of primary importance in new trial systems, relates to realizing implications of innocence principle in all stages of criminal proceedings, particularly the observance of equality of individuals before the law and equal access to the means of defense. However, one of the important impacts of innocence principle is that the person arrested for the charge of committing a crime, must be presented promptly before judicial authorities and a decision be made about him. In the absence of such a right, it will be possible that a person be arrested with the charge to an offense, and despite too much time of his arrest, his file not to be handled.

Hence, the laws of many states have considered a short period within which the accused shall be presented before the judicial authorities, and a decision must be taken on his charge. Subparagraph 3 of paragraph 3 of article 14 of the international covenant on civil and political rights provides that the person accused to committing a crime must be tried without undue delay. European Convention for the Protection of Human Rights and Fundamental Freedoms has noted direct point in this matter. Apparently, the drafters of its text considered as sufficient, the guarantees provided in paragraph 1 of article 6, about the reasonableness of the trial period. As, in the view of the UN Human Rights Committee also there is no difference between guarantees provided in paragraph 3 of article 14 of the covenant, and what is provided in the paragraph(clause) 3 of article 9 of it about proceedings detained persons in a reasonable time, and it consider infring-

ing one as violating the other. The Committee stated in a general explanation that when the respective right can be enjoyed at all stages in trial, including (primitive, and appeal stages) that there have not been any unnecessary delay. This guarantee entitles the accused to be collected the charge reasons including summoning of witnesses and registering their statements, as soon as possible. Rationale of discussed guarantee is the necessity of immediacy; giving end to anxiety and feeling of insecurity and social mental crisis; and any other losses which has came with charging to him and his family.

In subparagraph (c) of paragraph one of Article 67 of the Statute of the International Criminal Court is provided that investigation of criminal charges shall be made without unjustified delay. Ensuring prompt trial in criminal proceedings is connected with the right of freedom, innocence presumption, and right to defense. The purpose of this issue is that too much time may conduce to many adverse results in terms of accessing to the useful facts for filing, and maintaining individual and defensive rights of the accused. Proceedings must be initiated without delay and the Definitive verdict must be issued. This right requires the competent authorities to guarantee the matter that the pre-trial and final appeal stages must be completed in a reasonable time, and the decisions be issued. Sub paragraph (c) of paragraph 1 of Article 67 of the Statute of the International Criminal Court states that investigating criminal charges must be without undue delay. Ensuring prompt trial in criminal procedures is connected with the right of freedom, the presumption of innocence and the right to defense. Its purpose is to ensure the determination of the fate and destiny of the accused without unjustified delay and that, defense of the accused not to be weakened during a long time. Since, during a long time, witnesses lose their memories, and unavailability of witnesses and destroying or disappearing evidence is possible.

During a case proceeding, the reasonable time is that will be considered regarding given circumstances of each case. And many factors are considered in determining whether the proceedings have been reasonable according to the complexity of the each case. Examples are: the nature and severity of the crime, number of charges, the nature of essential inquiries and the number of persons involved in offense and the number of witnesses (Taha & Ashrafi, 2006, pp. 169-173) The presumption of innocence is considered as one of the most important general principles and rules, which is guiding the criminal law. Now, through developing the criminal innocence principle in modern trial systems, it is expected of the principle to ensure the security sense, and freedom of individuals and society members. In other words, purpose of the concept of the presumption of innocence is to give immunity to individuals against aggressions of others, especially those who in power, and representatives of public forces. What is of primary importance in new trial systems relates to realizing implications of innocence principle in all stages of criminal proceedings, particularly the observance of equality of individuals before the law and equal access to the means of defense. However, one of the significant impacts of innocence principle is that the person arrested in order to the charge of committing a crime, must be presented promptly before judicial authorities and a decision be made about him. In the absence of such a right, it will be possible that a person be arrested with the charge to an offense, and despite too much time of his arrest, his file not to be handled. Hence, the laws of many states have considered a short period within which he accused shall be presented before the judicial authorities, and a decision must be taken on his charge. Subparagraph 3 of paragraph 3 of article 14 of the covenant provides that the person accused to committing a crime must be tried promptly. European Convention for the Protection of Human Rights and Fundamental Freedoms has not direct point in this section. Apparently, the drafters of its text considered as sufficient, the guarantees provided in paragraph 1 of article 6, about the reasonableness of the trial period. As, in the view of the UN Human Rights Committee also there is no difference between guarantees provided in paragraph 3 of article 14 of the covenant, and what is provided in the paragraph(clause) 3 of article 9 of it, about proceedings detained persons in a reasonable time, and it considers infringing one as violating the other. The Committee stated in a general explanation that when the respective right can be enjoyed at all stages in trial, including (primitive, and appeal stages) that there have not been any unnecessary delay. This guarantee entitles the accused to be collected the charge reasons including summoning of witnesses and registering their statements, as soon as possible. Rationale of discussed guarantee is the necessity of immediacy; giving end to anxiety and feeling of insecurity and social mental crisis; and any other losses which has came with charging to him and his family.

The right to access a lawyer or solicitor

Anyone charged with a crime has the right to defend himself in person or by a lawyer; he or she is entitled to enjoy the legal assistance of his chosen lawyer. The Right to choose a lawyer and informing such right from the time of crime detection to the time of execution of issued verdict is of most important legal guarantees for defensive rights of the accused, and is an obvious right for accused at all stages of criminal proceedings. The possibility to choose lawyer in Preliminary investigation and the necessity of his presence and legal activity in defending his client's rights, especially in the time of investigation, is considered as a substantial guarantee for maintaining individual rights and freedoms and depriving disturbance in defense right. According to wisdom and equity, by complexity of legal issues, particularly in criminal matters relating to honor, dignity, and the life of individuals, the accused shall be able to access a lawyer to defending of himself which requires knowing the laws and judicial matters (Moezen Zadegan, 2005). Presence of a lawyer causes to self confidence of the accused and the elimination of anxiety and fear in responding to questions posed by the competent judicial authorities. Subparagraph (d) of paragraph 1 of Article 67 of the Statute of the International Criminal Court has provided that: Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it" The right of access to a lawyer and his legal assistance means the right to chose a lawyer or in cases which justice requires, an Appointed lawyer must be determined for him and if necessary, must be free. Also, the accused and his lawyer (if available), shall be given adequate time and facilities in order to preparing to defense (Taha & Ashrafi, 2006, p. 176) There are some provisions in international instruments on informing the accused of his right to choose a lawyer. As observed above, there is no explicit and useful provision in domestic law in this regard. The Right to access a lawyer and to be informed of this right is provided as a fundamental right in the international human rights instruments. According to subparagraph (B) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights: "Everyone charged with a criminal offense shall have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing"

The UN Human Rights Committee in explaining the latter part stated that the accused must have adequate time to conclude lawyer contract and necessary negotiations and contacting to his chosen lawyer. Former code of Criminal procedure had implicitly recognized the right to access a lawyer in Article 25 and Article 112 Clause; but had not obliged the judicial officers to respect this defensive right of the accused. In 1998 Legislator neglected the right to have lawyer as one of fundamental guarantees of the accused defensive rights, with making substantially changes in former provisions and revoking the article 25 of the former code of criminal procedure and with not to replacing an appropriate article to it. Depriving the lawyer from having the information and the legal knowledge at a sensitive stage such as the stage of crime detection in which judicial officers have broad powers, not only breaches the guarantee predicted in international documents on the matter of the accused right to chose a lawyer, but Leaves open a way to officers, for abusing their powers in collecting dishonest reasons against the accused who are uninformed and unaware of the legal Criteria. This legal gape is further sensed in cases where the accused presents unconsidered statements due to lack of familiarity with the rules and regulations. Subparagraph (d) of paragraph 1 of Article 67 of the Statute of the International Criminal Court has stated that: Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it"

The right of access to a lawyer and his legal assistance means the right to chose a lawyer or in cases which justice requires, an Appointed lawyer must be determined for him and if necessary, must be free. Also, the accused and his lawyer (if available), shall be given adequate time and facilities in order to preparing to defense (Shabas, William, 2010). In these article, enjoying adequate facilities to defense, along with the accused right to be informed of his rights, indeed means the necessity of

informing the accused of the right to choose a lawyer at proceeding stages including the stage of preliminary investigation, And it also means the right of the accused and suspected person to a secure and confidential consultation with his lawyer or an appointed lawyer. In Shitte jurisprudence, juris consults under the title of lawyer in hostility, have been permitted owning a right of having a lawyer in all criminal and civil cases (Khomeini Ruhallah, 1995, p.45) Even In some Islamic law writings, refusing a lawyer at the stage of crime detection and of investigation and finally of preliminary investigations, is injustice (Jafari Langerodi, 1995). Even if an accused does not wish to participate in trial, the right to reach lawyer also is applied. Because, assistance of the lawyer is a primary way to ensure protecting human rights of the persons charged with criminal offenses, especially their right to fair trial. Article 35 of the constitution of the Islamic Republic of Iran, in term of "before all courts, the parties to a case have the right to choose their attorneys and if cannot afford to have an attorney, the possibilities of appointing an attorney must be provided for them" , and the single article (the act of choosing lawyer by the parties)(1992) approved by The Expediency Council considered the necessity of lawyer intervention, and the society's duty to provide it in the case of Financial inability of the accused only in courts and at the time of proceedings, is silent in the matter of the necessity of lawyer intervention in preliminary investigations.

However, it is clear to judicial professionals, the effective role of the lawyer at the stage of preliminary investigations, and near the judiciary officers. Although from a historical point of view, the right of the accused to access lawyer services in courts has been accepted by legislators prior to prosecutors which derive from Audit system governing on preliminary investigations even in the eighteenth and nineteenth centuries, Now regarding the further trial figure of preliminary investigations on one hand, and the inability of most accused to provide adequate defense in prosecutors on the other hand, and a variety of cases concerning legal mistakes, and violations to the accused rights that at least is assumed as cause to Prolongation of Procedure, legislators have tended to consider the importance and necessity of presenting the lawyer and his playing an effective role at the stage of collecting reasons against accused. Adequate and actual using of the right to have lawyer is subjected to being informed of accused of having such a right. Article 35 of the constitution, asserted the right to choose a lawyer, and in accordance with the rules and criteria of fair trial, it must be provided the adequate condition to defense. In the laws of many states, informing the accused of his rights is one of his rights. As a first principle of "fundamental principles of attorneys' roles" has emphasized the right to choose lawyers at all stages of criminal proceedings including investigation, and in principle 7, refers to prompt access of arrested or detained persons to lawyer in less than 48 hours from the time of arrest or detention. Also, subparagraph a of principle 7 of " code principles for the protection of all persons under any form of detention or imprisonment" states explicitly that: Detained person shall be informed by competent authorities of right to chose a lawyer immediately after being arrested, and the reasonable facilities in order to fulfill this right, shall be provided for detainee."

The spirit of human rights criterions is based on the confliction between individual and the state. One party to a trial may be both uneducated or ignorant that person who now is to defend himself against the charge of committing a crime, and certainly the other party is state that governs and establishes the laws. Paragraph 3 of Article 14 of the Covenant on Civil and Political Rights is also interesting in this case. According to it, the accused must have "adequate facilities" for defending himself. It seems that, as a guarantee for fair trial, informing the rights of accused is as one of the matters that facilitates his defense. Until now, Iran's laws has been silent about this matter. Even, Article 44 of the Executive Regulations of Prisons involves a "late" and perhaps "incomplete " informing the accused rights. In its paragraph 3 of Article 44, there is a reference to providing booklets prepared in prisons by the 'Office to protection of citizenship rights of prisoners', in which the Legal rights and duties of convicted and accused persons have noted and the newcomer prisoners are given notice of these rights and duties such as the right to chose lawyer (Khaleghi Minu, 2005). the right to have lawyer at proceeding stages is not restricted to determining a lawyer by the accused, but if the accused does not have afford to doing so, the court or prosecutors is obliged to appoint an appointed attorney for him.

The recently approved code of Criminal procedure has predicted appointed attorney for afford less accused, by taking into account the subparagraph E of paragraph 3 of article 14 of the inter-

national covenant on civil and political rights. according to article 186 of concerning code: if the accused ask for choosing lawyer in order to defending himself at trial stage, but be not able to pay the fees(honorarium), he can request the court to appoint a lawyer for him. If the court finds that the accused does not have afford to choose a lawyer, appoints an attorney from within jurisdiction lawyers and otherwise from the nearest neighboring jurisdiction, and if the lawyer demand for fee, the court will determine fee in proportion with his work. However according to the Article 187 of discussed law, accused's request to change the appointed lawyer, except in following cases, is not allowed:

(a) A Blood or marriage relationship to the third degree of each class is between the appointed attorney and one of the parties.

(B) Appointed attorney is the guardian or servant of a party or one party is his overseer or breadwinner of his /her spouse.

C) appointed attorney or his spouse or his child is heir to one of the parties.

(D) Appointed attorney had made statement formerly in issue of action as a judge or arbitrator or as an expert or witness to it.

(E) There is, or there was before, a legal or criminal action between the appointed attorney and one of the parties or his spouse or child, and it is not passed two years from the date of the final decree.

(F) Appointed attorney or his spouse or his child has a personal interest in the matter. Furthermore, legislator is accepted the mandatory advocacy in criminal courts on offenses that, their penalty according to the law are; Retaliation penalty, execution, Stoning, and life imprisonment.

The right to call witnesses and examine him and introducing a witness

The rights to defense and call and examine witnesses are of Fundamental factors to principle of equality of arms. This right ensures that the accused must have mandatory authorities to call and examine the witnesses like attorney general. In other words, the right to call and examine the witnesses ensures that the accused has opportunity to question the witnesses who provided evidence in favor of the him, and also to object the reasons against the accused, and also questioning the accused and attorney general from witnesses, creates an opportunity to present documents(evidence) or reasons of objection to them, In this regard, subparagraph (e) of paragraph 1 of Article 67 of the Statute of the International Criminal Court has provided that: "To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defenses and to present other evidence admissible under this Statute".

The right to question witnesses against the accused means that all evidence must presented normally in open court in the presence of the accused, so that the accused could object the reality and authenticity of the proofs. Although there are exceptions to this principle, and the accused right to question witnesses against him is limited on the basis of his behavior. For example, if the accused is Fugitive , or witnesses are unavailable or when witnesses are afraid of retaliation. It also can be said that appealing to testimony of an anonymous (nameless) witness, is infringing the right to question witness by the accused, because the accused is deprived of essential information for change witness credibility (Taha & Ashrafi, 2006, p. 200).

Generally, on the basis of Article 148 of the code of Criminal Procedure:

"the Judge, according to set forth rules, summons the persons who realize that their presence is necessary to clarifying the charges, or persons by introducing the claimant or by introducing relevant authorities or by requesting the accused."

Article 86 of this provision, in order to implement this general principle and limiting the cases of summoning of witnesses, enumerates the lawful cases of summoning the witness as:

1- Trying be based on claimant's action, and the accused present a witness that the court be aware of his testify at the time crime was happened.

2- If justice is belong to testifying a witness who the court is aware of his being witness.

3 - Investigating the witnesses is in order to crime's relation to security and public order.

The right to get last defense

To further provision of the defense rights of the accused, getting the last defense or the last word of the accused, asserts this concept that the evidence expressed by the accused to remove the charges does not suffice and it is necessary for him to have one last opportunity to express new statements, if available, to deny the charge. The right to getting

the last defense has its roots in the fundamental principle of criminal law i.e. the principle of presumption of innocence and is justified on its base, And its aim is that, after hearing the complainant and witness statements and by investigator authority, and, gathering reasons, always, the last person to express statement must be the accused, So that he can represent any defense he wish, in order to establish the presumption of innocence (Madani, 200, p.148). Between jurists, there is a debate as to whether getting the last defense of the accused is his right, or is a duty of judiciary? According to the criminological approach, each jurist has an especial viewpoint in this regard. Some legal experts believe it is a right of the accused person, and some other, suppose it as a duty of judiciary authority. Former jurists believe that: firstly, defense is right of the accused and then it may be illogical to force the accused to exercise his right. Secondly, legislator has provided arresting the accused only in stage prior to informing the charge and issuing securance dictum. Therefore, one is not entitled to arrest the accused who has not pretended to express the last defense in order to exercise his right.

This is not only opposing to the law, but the accused may keep silence after arrest and does not defend himself, that will make such arrest irrational. But In contrary, those who believe that getting the last defense, is a duty of judicial authorities state: first, Formalities of Criminal Procedure, are of Jus cogens which not only the judicial authority, but even the accused who has interest in such formalities, may not ignore them. Secondly, arresting the accused is not only in the cases prior to securance dictum, but according to articles 116 & 117 of the code of criminal procedure, In all cases where the accused's presence is necessary, if he does not present without any justifiable excuse, is arrested by permission of The Summoning authority (Ashori Mohammad, Ibid, p. 111). Other jurists have represented a different theory and believe that arresting the accused to get the last defense is not absolutely a legal duty, and not also a right to the accused; but a matter which the judicial authority shall realize its necessity according to any case. And as understood of the text of article 181 of the code of criminal procedure, when the presence of the accused at the stage of preliminary investigation or trial is necessary, or trial without presence of the accused and hearing his defense becomes difficult and the conscience does not satisfied, this is only possible via detention. Attention, not only does not contradict the accused right, but ignoring it and making a legal decision without obtaining last defense is inconsistent with the text of article 181 of the Code of Criminal Procedure and maintaining the rights of the accused and society (Akhundi Mahmud, 2005).

In paragraphs (b) to (E) of article 193, the Code of Criminal Procedure, in stating Arrangements of criminal trial, obliges the judge to consider the evidence and defenses of the accused and lawyer, and Only the first paragraph, binds the judge to hear the statements of the claimant, and Private claimant and their reasons. This accuracy of the legislator, is in order to a making a further attempt to prevent violation of the rights of the accused.

Finally this article, once again following the Article 161 of the former Code of Criminal Procedure, calls the court attention to the accused and states: "The court is obliged to respect statements of the parties and the statement made on one party which is used by another party, and the exact statements of witnesses and experts in record. After ending the proceedings, the court shall allow accused or attorney to speak, as a last defense, and after parties signed, the proceeding ends. " As in act on rehabilitation of prosecutors, getting the last defense is based on the presumption of innocence. And the aim is that, after hearing the statements of compliant and witness by investigation authority and collecting reasons, always the last person, who tells the statement, is the accused.

Thus, after ending the preliminary investigation, in the case that the investigating judge realizes that reasons and evidence in file is sufficient to be committing a crime and to attribute it to the accused and believes in culpability of him, is required prior to issuance of the indictment and to re-inform the charge and the whole evidence and reasons belonging to it, and to wish him If there is something about his innocence is expressed as a last defense. In this respect, and in accordance with paragraph 5 of Article 193 of code of criminal procedure, if the accused or his lawyer present any effective and new in relation to discovering the truth or innocence of the accused, the court is requires trying. Conditions to obtain the last defense in a trial may have several states in terms of period to proceeding. The first state is that, after judicial investigations of the prosecution authority, he finds adequate reasons against the accused, so that after being informed of the charge, the accused does not need other opportunity to get last defense, and the judicial authority is needless to any investigation.

In this state, in same session, and along with informing the charge and hearing the statements and the accused defenses, his last defense is gotten. The second state appears when, the accused defense at the stage of investigation and informing the charge, requires another investigations, and therefore the judiciary authorities cannot hear the last defense, within informing the charge, in same session.

Accordingly, by issuing one adequate criminal securance dictum continues to its investigations. By This assumption, if the accused submit concerning dictum, is released, And the judicial authority goes ahead its respective investigations and if considers culpable the accused, he is summoned to getting the last defense. In international instruments, there is no any explicit and absolute text concerning the right to get last defense. Even the Statute of the International Criminal Court is silent on this issue. Probably the reason is that the right to obtain last defense is regarded as branches of innocence right and it seems to be sufficient the provisions relating to this right.

Conclusions

The initial step in the criminal trial process is the preliminary investigation, which is considered as the first stage of contacting the guilty with judicial system. Of course it is needed to entities at this stage, in which the person confronts judicial system, to protect the person against this system and to ensure his human rights. At this point, the person is not yet a guilty, but rather is only charged with committing a crime, that his guilt or innocence must be proven at the end of this stage.

Therefore, there is a twofold situation for the involved person at this stage that on one hand, he is an innocent person, and on other hands he is charged with committing a crime (offense), which must also be held accountable in this regard. Hence human rights guarantees will still remain because he yet is considered as an innocence person and his guilt has not been proved, but in other hands, regarding his suspicious situation, there are also fair trial guarantees for him, since he must be accountable before the judicial system. In The legal system of the Islamic Republic of Iran, there are several legal measures to protect the accused at the preliminary investigation stage such as right to defense, right to access to a lawyer, summoning the witnesses and so on. However the mere existence of such rights in a legal system is not sufficient and these rights have to be regarded also at the implementation stage. All together, it can be concluded that the legal provisions available at the legal investigations in Iran's legal system, are overlapping with, and have many similarities to, the human rights criteria.

One of the most important rights of the accused at this stage is the independence of the investigating judge. In fact, this right can be a foundation to other rights and can ensure other rights at the stage of preliminary investigations. However, according to Iran's laws, an investigating judge at the prosecutors' court house shall do (his/her) duties and in terms of employment relations and legal hierarchy, he is a subset of the prosecutor. The prosecutor as public attorney can take effect in the form of carrying the preliminary investigations by the interrogator or the investigating judge and hence, the independency of the interrogator or the investigating judge is corrupt. So it is hoped that this defect be resolve in the bill on the Code of Criminal Procedure which now is under considering and adopting by parliament.

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