International Journal of Academic Research (ISSN: 2075-4124)
May 2015, pp: 319-337

The Law Guarantees Judicial Security of the Accused in the Court

Seyyed Abbas Jazaeri

Ph.D. Student of Criminal Law and Criminology, Department of Criminal Law & Criminology, College of Law and Political Science, Science and Research Branch, Islamic Azad University, Tehran, Iran

Abstract:

By providing indictment and refer the case to the court, the accused enters a new phase of proceedings. At this stage, the result of examinations conducted in the office of the prosecutor, prove the defendant's innocence or guilt in the court, new rights will also bring with it for the accused. Respecting of these rights and consequently ensures a fair trial, guarantees judicial security of the accused in the proceedings. Rights such as: freedom pre-trial, the right to attend the court hearings, the right of remains silent in the proceeding, judicial review of the evidences, etc. According to the aspect of human rights and their violation in some trials conducted in the member states' courts of the European Convention on Human Rights, the main mission of the European Court of Human Rights (ECHR) is to address the violations of these rights of the accused. Most of sentences of ECHR are about violation of accused rights at the trial. So in this paper the rights of accused in the Iranian law and practice of ECHR are examined with a comparative approach.

Keywords: fair trial, accused rights, detention, open hearing, the right of attending to the court, reasoned decision.

Introduction

Stage of the proceedings in the court which would result in verdict of conviction or innocent of accused should be accompanied with different guaranties in order to protect his legitimate rights. These rights start since of official notification to the accused to stand in trial, and contain rights such as examining evidence, keep confidentiality of trial, openness of the court and so on. Whereas the mentioned rights also have been reflected in European Court of Human Rights (ECHR) and the Court in its investigations have identified many deficiencies in the national proceedings of Member States; so comparative study of these rights will be useful and practical.

Rights of the accused in the court proceeding

(1) The right of freedom from detention through trial.

After preliminary investigation, if the prosecutor believes that accused is guilty, the case should be submitted to the court for proceedings and sentencing. When the accused was summoned to appear before the court for firstly explanation of the charge and then to be investigated, proceedings Judge shall issue one of the proper Criminal security warrants which it will fit the type of offense, charge's evidences, and accused's personality. If the prosecutor determines that the accused is guilty, he/she would be treated base on this warrant until the time of trial and the execution of sentence.

There is not a problem, in cases where the security warrant is other than temporary detention, but when it's been diagnosed that the accused should be kept in detention, this conflict arise that his right to collect evidence and prepare a defense serve in case that he is in detention, can't be served.

As a general rule, people who are waiting for a trial on criminal charges should not be kept in prison. In order to respect the right of liberty and the presumption of accused's innocence, there is an assumption that the accused shall not be detained prior to trial.

Despite this general prohibition, international instruments such as the International Covenant on Civil and Political Rights, expressly provides that authorities could determine terms for freedom of the individual or detain individuals during the trial according to some conditions and circumstances. These circumstances include: the need of preventing a suspect's escape, eliminating his/her interference with witnesses or obstruct the path of the suspect to inflict harm on others and so on and of course these are exceptions and should be applied when there is no other choices to provide such necessities.

In Iran's law, preventing accused for conspiracy or escape or destroying evidences of the crime are some of the reasons for issuing such criminal warrants, hence according to the concepts of article 32 and 35 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts, the issuance of a sentence for temporary detention is contrary to the principle and by eliminating of the grounds of detention, it is necessary that the accused be released. The same concept exists in note (h) of Article 3 of Iran's codes of the Public and Revolutionary Courts Formation. According to this note:

"Whenever the accused realize that there is no any other reason to be in detention , he or she could ask the examining magistrate to release him/her, In this case, the examining magistrate shall, within ten days from the date of submission of the request, send his/her decision to the prosecutor for final decision."

In other words, the continued detention shall not be made except in case of emergency and the accused should always be careful whenever the reasons of detention is ruled out, demand court to be released.

Now this question arises, if the judicial authority based on the circumstances of the case and the charges, issue temporary detention, how the accused could determine its discredit and if there is any obligation for issuing authority to determine that where The reasons for the detention has been eliminated or not?

Fortunately in Article 241 of the Iran's new criminal codes of procedure, it's examining magistrate's obligation to pay attention to reasons of continued detention (Contrary to paragraph (h) of Article 3of Iran's codes of the Public and Revolutionary Courts Formation). According to this article:

"Whenever reasons for continued detention have been eliminated, the examining magistrate agreed with prosecutor resolve the immediate release of the accused."

Basically accused must have liberty during trial, unless the relevant and sufficient reasons exist to justify his continued detention. The court may reject this liberty based on four main reasons: The risk of accused's scape, the risk of subverting justice, the risk of committing crime and the risk of public disorder.

Seriousness of the allegations cannot justify the accused's lengthy detention by itself and the presumption in favor of liberty of accused must always exist. So whenever the authorities decide an accused should be released or detained, they shall consider alternative measures to guarantee his/her attendance in court.

Note pursuant to the Article 226 of Criminal Codes of Procedure Act [4] the issued authority and Chairman of prison or his deputy shall take

necessary measures so accused can find warrantor and bailsman and also in the absent of issued authority, the standby judge shall accept provided guarantees. The code reflects sensitivity of legislator to the issues of detention of individuals.

Iranian legislature has taken major measurements to reduce the criminal population. For example the beginning part of article 237 Codes of Criminal Procedure Act provides: "*the temporary detention is not lawful unless* ..." Also its note has reduced instances of detention in specific law except in military law. As well Article 239 express the need for evidenced, documented and justified decisions for temporary detention and the recent phrase of Article 242 determine a maximum of two-year time limitation for detention according to the type of offense.

ECHR in several verdicts indicated the necessity of releasing the accused pre-trial, for example in one case and in the general comments of its verdict, ECHR expressed that the continued pre-trial detention is justified only when: Regardless of the presumption of innocence and the importance of the principle of respect for individual liberty, characteristic symptoms of the real necessity exist in the favor of the public interest [27].

ECHR In another important issued verdict expressed its opinion about the general standards that are necessary for continued detention of the accused before the trial. In this case, defendants were accused of fraud in the national court. Their detention was extended four times in a way that the first defendant has been detained over four years and the second defendant over a year and a half was in prison. In this case, ECHR emphasized again four plausible reason for the continued detention: The risk for absence of the accused at trial; the possibility of subverting justice by the accused if he/she release; the possibility of committing another crime or creating public disorder. However, ECHR noted that the claims for or against the liberty must not be overall.

ECHR concluded that in the mentioned case, decisions of national courts were considerably overall and without rationality and they did not describe the details of the accused's situation. They referred to the character of accused without explaining exactly how and why it could be related to the necessity of his/her detention. In further extension of custody, without providing specific details or considering alternative applicable actions, the order was given to arrest because defendant did not attend to the trial for several times. ECHR concluded that the defendant repeatedly arrested during a criminal investigation, based on irrational behavior and in violation of Section 1 and 3 of Article 5 of the European Convention on Human Rights [25].

Moreover, ECHR in its various verdicts recognized that the accused's release request to the judicial authorities is enough to oblige authorities to provide reasons for their continued detention especially in a case that the accused has been detained for a considerable period of time and he has complained for his detention.

With regard to the second part of paragraph 3 of Article 5 of the Convention, a person who is accused for a crime should be released during the trial unless the government could prove relevant and sufficient reasons to justify his continued detention. According to the ECHR opinion, national judicial authorities must examine the reasons for and against accused release and they must use them in their decisions regarding his/her freedom.

Although reasonable suspicion that an offense is committed could be sufficient to guarantee the initial arrest, but the seriousness of the crimes could not justify a prolonged detention

by itself and if it is possible to guarantee the risk of his/her scape, the accused must be released. [17].

(2) The right to be tried in an open court

Openness of trials, particularly in criminal trials, is a tool for public observation on the courts and it ensures the rights of individuals. There are some worries about trials which conduct in secret and closed rooms, as they suffer lack of proper observance of the law and implementation of the necessary safeguards for the rights of parties to a lawsuit and accused. So the openness of trials and the possibility of the presence of audience as a principle have been accepted. Disclosed trials are exception that the court decides such trials in certain cases. In Iran's law, the right of the public hearing is approved by the constitution. The article 165 of the constitution provides:

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

This principle reflected in Article 188 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts.

Article 188 states:

"According to the court, the proceedings are open except in the following situations:

1- Unchaste acts and crimes against good morals.

2- Family disputes or private claims upon the requests of both parties.

3- Having an open session which disturbs security or religious feelings."

But using broad terms such as "good morals" and "security or religious feelings " has provide a wide range of opportunities for the Judges to conduct the trial without the attendance of public. As well as Article 168 of the constitution provide that political and press offenses will be considered public. Article 168 provides:

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

According to Paragraph 1 of Article 9 of the Regulations for Revolutionary Tribunal and Courts:

"The trial is Public hearing, unless the presiding judge realizes that it should be closed."

This concept also is provided in article 327 of the former Criminal Codes of Procedure Act and also in Article 136 of Civil Codes of Procedure Act [10].

While Article 352 of new Act of Criminal Codes of Procedure [4] states that:

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

Nevertheless Article 192 of the mentioned Act explicitly declared that the preliminary investigation of unpardonable crimes should be closed and Article 206 of the mentioned Act indicated that the investigation and the interrogation of witnesses and informers pre-trial should be closed. As well as Article 305 states that:

"Political and press offences would be conducted closed in the provincial capital

criminal Court and with the attendance of jury. Also in family affairs and indecent or opposite to good morals crimes and those cases that are harmful to public security or public religious or ethnic sentiments, court after the prosecutor's opinion shall issue the non-public trial. "

In paragraph 1 of Article 6 of the European Convention on Human Rights, on the section of the right to a fair trial, accused's right to a public trial has been approved. Also the results shall be announced publicly, but there is a possibility of non-public for all or part of the hearing or trial. Maintain public order, morality or security in a democratic society, the interests of minors, protection of the parties to the proceedings and the court opinion that the openness of the trial may impair the interests of justice in some circumstances. These are some cases which justify closed trial not in an absolute form.

In addition to the need for an open trial, the sentence also shall be issued to the public unless some exceptions. This commitment will apply to all sentences issued by the lower courts and the Court of Appeals. The main objective of issuing public sentences is to ensure the public justice and the public observation. So the implementation of this right can be exercised by anyone, even those who have not been addressed by the claim. Article 404 of the criminal Codes of Procedure Act [4] states:

"... After issuing the sentence, immediately open session of the court will held with attendance of the accused or his attorney and the prosecutor or his agent and the sentences shall be announced by the clerk of the court loudly and its contents shall be explained to the accused by the presiding judge. "

According to ECHR, the trial is consistent with the requirements of openness, if the public is able to obtain the information about the date and location of trial and the place for the trial is available for the public. In many instances, this condition easily will meet with a large enough space to hold up in a court room.

ECHR pointed out that holding trial in the unusual rooms and in certain areas, especially prisons, which the public could not have access to them make serious obstacle to an unclosed prosecution. In this case the government must take measures to ensure the awareness of the public and media about the trial location and provide effective access to trial [23].

The court's opinion about the confidentiality of the contents just remain in some cases that governing private relations and is unrelated to the allegations set forth (E.g., relationship with spouse, friends or political supporters) and for other cases the procedure does not need the necessity of confidentiality.

In the above cases that are exceptions to the disclosure of information of the trial, inform the public of this information, is not in accordance with social needs in a democratic society [19].

(3) The right of knowledge of trial date and the right to attend to the trial.

This is the most basic rights of the accused in the course of proceedings and it ensures his judicial security. As much as possible, the trial must be conducted with attendance of the accused and the opportunity to defend should be given to the accused by acceptable way of notification. Speedy trial of the accused is based on several factors, one of which is the necessity of his presence in court. The accused may lose his/her right to freedom and be detained pre-trial.

It is also suspicion that reputation of the person who is accused for committing a crime is threatening in the community. If the accused is innocent, speedy trial with his attendance will

prove his innocence earlier in the trial and society [5].

An accused who is the subject of criminal proceedings may not be aware of the date of trial and then fails to appear in court so he/she couldn't make his defense to the court. Hence the presence of the accused in criminal trials is essential.

In civil proceedings the judicial authority issue the verdict on the basis of existing evidence and inferences, but in the court the accused's criminal character is one of the important factors in determining the sentence. If the accused fails to appear in court and the judge can't see him closely, he cannot properly evaluate his/her personality. The attendance of lawyer does not deny the necessity of the presence of the accused, unless the accused does not show a tendency to appear in court.

In Iran's law by reviewing the section of "the judge tasks after the conclusion of the investigation," in Iran's criminal codes of Procedure for the Public and Revolutionary Courts, this point becomes apparent that importance of accused presence in almost all the cases that are related to the trial is mentioned and is emphasized. Accused will be informed of the date of hearing by sending formal and legal notice.

In case that the accused had previously been present at meetings during the preliminary investigation, based on rules, deputy district or prosecutor shall get complete profile of accused including address, place of residence during interrogation. It means that the accused agrees sending notification to that address. Article 129 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts, states that:

"At the beginning of the investigation, the magistrate or the deputy district shall explain to the accused that their address, will consider his/her legal residence and the accused shall notify the court of any changes in his/her address and the new location must be declared, otherwise legal notice will be sent to the former residence. "

If for any reason the accused was not available or the location is not known, and the accused cannot be summoned or draw, (if deem appropriate and with absence of any legal prohibition) the legal notice of the date of trial and the charges will publish in one of the local or widely circulated newspapers for once.

In order to accused preparations for appearances in court and have opportunity to prepare an adequate defense, he/she must have at least 3 days to prepare himself since the legal notice was delivered. Although the determination of such short duration may be in consistent with the philosophy speed of criminal procedure, but despite the great barriers in accessing the defendants and their lawyers during the preliminary investigations into the case, this short time to prepare a thorough and scientific defense is too low and somewhat unfair. However, in practice, due to the sheer volume of cases in the courts, it will be months away sometimes, but criteria to judge the quality of a country's justice system is the rules not its practical point of view. Also, when the accused is informed through the legal notice that is published in newspaper, preparation time will rise to one month.

In the time of the trial, if the accused is present, regardless of absence of the plaintiff, the court will enter to proceeding. But in the absence of the accused, the court's decision must be taken with regard to the contents of the case and the type of charges alleged.

If the court review contents of the cases and does not recognize any charges against the accused, pursuant to section (1) of Article 177 of Iran's criminal codes of Procedure for the

Public and Revolutionary Courts, the court shall issue the verdict of not guilty in the favor of accused. Reasonably believing that the accused's innocence would not jeopardize his rights and his presence is not required.

But if the court for investigating and providing explanations requires accused attendance, the court shall issue arrest warrant of accused. The point that should be mentioned here is that except for the offenses to God, the judge can issue a sentence without his presence, but when he thought the presence of the accused is necessary. The judge shall issue an arrest warrant. In fact, it's been considered that judges have another opportunity to observe the accused's defense. In other words, of this arresting and sending to trial, the accused may ultimately benefit all.

In the third case, the accused is absent and type of crime is related to individuals, and the court does not deem the necessity of accused present, in such cases, the court sentenced the accused in his absence, and the accused is entitled to appeal the sentence after becoming aware of the conviction.

In another case the accused is absent and alleged crimes is the right of God, Article 180 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts expressly indicate that:

"…court in the case of strong suspicion that a crime has committed, leaves the case open until it have access to the accused ."

The opposite concept of this article is that in the absence of a strong suspicion that a crime has been committed (by the accused), the court must, according to the first paragraph of Article 177, issue a verdict of innocence and not guilty.

From the perspective of the ECHR, the accused has the right to be present during the procedure. The prosecutor's remarks to be heard by the accused and he/she can challenge them and ultimately express defense. ECHR have an especial consideration to the right of knowledge about date of trial and attendance to trial.

Although these rights are inalienable part of the right of self-defense, but it has not mentioned in European Convention, however, ECHR declared that the object and purpose of Article 6 of the convention is that accused of crimes have the right to participate in hearings and proceedings [18].

From the perspective of the European Convention on Human Rights, in order to guarantee the fairness of criminal proceedings, it is important that the accused has the opportunity to speak and verify the statements and comparing them with the statements of the victims and witnesses, so the accused should be present at the trial, despite the fact that if the accused become aware of what has been done in her/his absence, then, it is not incompatible with the convention.

When the accused is present at the hearing physically, the court may find that the trial is not fair, because mental state of the accused is vulnerable or the accused was denied from the right to participate in the hearing process. Even when accused decide to deprive himself of the right to participation in hearing, the court shall not accept that easily.

One of the most important decisions of the ECHR is related to the need for an active participation of an 11-year-old accused in the trial which was charged for murder and kidnapping. He complained about violation of their right to participate effectively in the hearing, especially as the result of stress after the event, his ability to get the necessary certification guide and counsel in his own defense, was limited.

In this case, ECHR noted that his trial had made high amount of pressure and public attention in and out of the court. ECHR indicated that with considering the atmosphere created by the courts, it seems unlikely that the accused sufficiently conferred with his lawyer during the trial to feel safe.

In addition, his immature and vulnerable mental condition deprived him to cooperate with his lawyer outside the court. (T. v. the United Kingdom, 16 December 1999, ECtHR [Grand Chamber])

In Iran's law pursuant to Article 414 of Criminal Codes of Procedure Act: *"Considering the child benefits, whenever it deems appropriate, it may be taken all or part of the proceedings in his absence. But the Verdict will consider being in his attendance and in person."*

Note added to Article 455 of the Criminal Procedure Code Act (2013) indicated that:

"The lack of due process hearing, won't violate the verdict unless the procedures as to the degree of importance that would invalidate the verdict."

(4) The right of referring to the testimony of witnesses and questioning witnesses

The results relate to the accused presence in court is that accused can personally or by the lawyer defend himself/herself and question witnesses. (Note 3 (d) (e) of Article 14 of the International Covenant on Civil and Political Rights), hence parties can be informed of each other reasons and they can dispute them. Basically, the purpose of the oral hearing of the trial, which is a characteristic of cross-examination, is that the parties orally be examined. Thus, the trial judge should examine the witnesses in the preliminary phase of the trial and summon them to court in final hearing. Referring to the minutes of preliminary investigation, especially about their testimony, is not sufficient to satisfy the judge's conscience.

In domestic rights, a legislative measure that has been devised for the examination of witnesses in court is as follows:

1- Giving an oath by the witness before making the statements. (Article 153 of Criminal Codes of Procedure Act).
2- Hearing and registering witnesses and parties statements by the Court. (Article 196 of Criminal Codes of Procedure Act).
3- The president of the court is obliged to investigate every witness separately and take steps to prevent collusion. (Article 196 of Criminal Codes of Procedure Act)
4- The witnesses after testify shall not separate unless the court allows that. (Article 200 of Criminal Codes of Procedure Act)
5- Set the translator for plaintiff or accused, if they do not know the Persian language. (Article 202 of Criminal Codes of Procedure Act)
6- The prohibition of interrupting speaks of witnesses. (Article 199 of Criminal Codes of Procedure Act)

Article 198 also stipulates that when the court heard testimony from one party's witness; ask of other party to pose their questions of the witness. These measures that are in accordance with human rights standards are more specific for trial. However in the preliminary stage, investigating judge examine each witness separately without present of accused. Every accused has the right to provide their evidence and witnesses and examine them under the same conditions as witnesses have been examined against him.

Pursuant Article 398 of Criminal Codes of Procedure Act (2013), the accused, the plaintiff and the persecutor have right to request the investigation of persons who are available in the court. The court investigates them even they are not being summoned or called in advance.

The ECHR has stated on numerous occasions that if the court verdict is based on undercover police reports, transcripts of intercepted phone conversations, the accused's statements after reading the minutes and so on, the accused's rights has been violated. Because in such cases the accused does not have the opportunity to review and challenge the transcripts or undercover police reports who were called to testify without revealing his/her identity.

But the ECHR mentioned in the case of undercover police officer that investigating judge and the accused knew the witness as they've met him for several times, and that's enough to the testimony not be considered as anonymous. Because the anonymous means accused is not aware of his identity and if so, it violates accused's right to bring witnesses to assess, because the accused was deprived of the information necessary to challenge him. Using anonymous witness may result in the unfair proceedings [22].

(5) The right to judicial review of the evidences

Although this right never explicitly has been mentioned in Iran's law but it is clear that the court has to examine carefully all the evidences for and against the accused. In other words, Judge's consciences will be satisfied by the evidences that have been adduced by the parties and in the end determine the innocence or guilt verdict of the accused.

Thus, pursuant Article 14 (1) Iran's criminal codes of Procedure for the Public and Revolutionary Courts, the trial court that is higher than prosecutor office, can complete the primary investigations, and it shall have the authority to review and evaluate evidences that will be brought in the investigation. Because higher authorities are not obliged to decide based on evidences that has been provided from subordinate.

However, this option solely is for the evidences that the plaintiff or the accused insisted on their invalidity and so there is a possibility to prove its invalidity.

When regarding to charges (for example, In charge of the sale of non-financial), the official documents as evidence has been provided, the claim of invalidity won't be heard, that's the same for official opinions of judicial specialist when the court issued. After receiving the expert opinion, accused cannot object it and it can't be reexamined just in the ground of accused request.

Beyond this, the court can try the trial by the new evidences that accused or his/her lawyer provides and this new evidence has not been examined in the primary stage of investigation.

In discussing the reasons for a judicial review in the courts, the legislature considered further investigation of witnesses and has set the rules in this case, so that pursuant Article 193 Iran's criminal codes of Procedure for the Public and Revolutionary Courts, it's been explained that examining complaint witness and the accused's witnesses is necessary and the court shall insert statements of witnesses in the minutes of the trials.

Not only is the court's duty to investigate again witnesses, but also against Article 196 Iran's criminal codes of Procedure for the Public and Revolutionary Courts, provides that the court is obliged to investigate witnesses individually and take necessary measure to make them to be

separated in a way that they can't communicate with each other. Investigations of witnesses is so important that the court could consider reexamine them individually or in group by the request of the accused.

Article 342 of new Criminal Codes of Procedure Act has a better plan for ensuring the principal of equality in trial. The latter part of this article states that when the accused or his/her lawyer is summoned to the hearing; they should also receive the copy of indictment. According to Article 279 of the new law, the indictment must contain the reasons for assigning charges and legal referring of the crime, so the accused and his lawyer with a thorough understanding of the trial can prepare their defense.

In addition, the court has obligation to prepare a record of criminal conviction of accused that will facilitate work of the court's decision in determining the appropriate penalty. (Article 279 (c) Iran's criminal codes of Procedure for the Public and Revolutionary Courts)

ECHR, in reviewing its two of the most important verdicts, has considered witnesses statement procedure. These cases are the "Al-Khawaja" and "Taheri" against England.

Mr. Al-Khawaja, who was a doctor, was sentenced to two charges of sexual assault with two patient women in 2004. One patient died before the trial, but before her death, her statements was given to the police and the statement has been read in court for the jury. Local court verdict was based on statement provided by the deceased patient's friend and other documents of the plaintiffs which the accused was unable to cross-examine them at trial.

Second defendant, Mr. Taheri was accused of participating in a knife crime. In this case the statements of witness (T) Who was present at the scene, made him to be accused. Witness (T.) was very afraid of going to court and the judge decided to take the statement out of the trial so the accused was deprived from opportunity of cross-examination of witnesses. The second accused was convicted in 2005.

All two defendants declared that their sentences were based on witnesses' statement that they were unable to examine them and they requested to apply convention.

While the decision of ECHR in the initial proceedings was issued in favor of the Plaintiffs, but the Grand Chamber rejected this decision based on Article 6 (1) in conjunction with Article 6(3) (c) of the European Convention on Human Rights. The Grand Chamber indicated that when the witness's statement is the only evidence for condemnation, any obstacle which prevents accused to examine these statements will violated the rights of accused in article 6 of the convention. The Grand Chamber adopted new approach and introduce a three-part standard:

(1) There should be a good reason for the absence of witness.

Where the witness has died, his absence would be justified but in this case, fear can't be a fair reason for the absence of witnesses. Where fear is because of accused threatening, its reasonable even if the testimony is only or the main evidence of condemnation, so if fear consequences is unusual, In this case, the court must determine whether there are genuine grounds for this fear or not?

(2) Determine whether the witness's statements that is absent, are the only evidence or the main evidence against the accused or not? Accept and act on the testimony of such witnesses, by itself, does not lead to a violation of Article 6.

(3) In such cases there must be convincing and balanced criteria.

Also the court should take measures to examine reliability of the evidences more precisely. In applying the third standard, ECHR held that in principle such guarantees have been stipulated in the domestic rules.

In the case of Al-Khawaja, a witness died before trial, but her testimony was confirmed by the victim's friend, and thus a violation of Article 6 has been occurred. But in the Taheri case, the absent of witness was as an unrelated result to the accused and other evidences were unreliable. As a result those adequate measures were not balanced in this case; there is a violation of Article 6 in the Taheri case [16].

According to the ECHR, while Article 6 (3) (d) of the European Convention does not provide an obligation to evaluate all witness in favor of the accused, but the court should decide which witness needs to be called, upon the principles of fairness and equality. In another case ECHR illustrated that the right of accused of fair trial has been violated when he requested for examining 4 witnesses and the court ignore this request. [28].

(6) right of objection to the authenticity of Justice agents' investigations

In Iran's law, reports and investigations conducted by the justice agents always follows a principle, the principle that was indicated in note of Article 15 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts: *"The report of justice agents is valid when they are trustworthy and reliable for court judge."*

It may imply that the purpose of legislature of the word "report" is related to crime reports. But Article 15 explains duties of justice agents so it is included any official reports of justice agents from discovering crime, primary investigation and preventing scape and …

This principal ensure the benefits of accused and also the general public which indicate that reports of judicial agents must be approved by the judges. If a perfect credit was recognized for reports of justice agents until its invalidity will be proved otherwise, it would lead to a high possibility of abusing these types of reports.

According to this principal, justice agents must investigate in a way that the judge order otherwise there would be even punishment for them and their actions will be invalid. So it is wise that parties to the criminal court object the validity of these reports and request for further examination about them.

In this regard, Article 205 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts states: *"If one of the parties questions the validity of the reports of justice agents, the court must examine them with taking appropriate measures."*

So the affected party can even question the validity of reports from a police which has investigated and examined location of the crime by providing reasons of this invalidity. In practical benefits of this principal are for accused person as the evidence of justice agents usually affect accused person.

Article 36 of the Criminal Codes of Procedure Act (2013) provides:

"For validating report of judicial agents, they should not be in opposite of certain evidence and also they should be prepared in accordance with legal regulations."

Obviously, if the accused's right to be accompanied by legal lawyer at the preliminary stage has been violated, in accordance with Article 190 (1) of mentioned Act, these investigations are invalid. The same rule is applicable when the justice agents act out of their jurisdiction.

(7) The right of the accused to be silence in court

One of the branches of the defense rights of the defendant is the accused's right of silence or to remain silent in the court and before judicial authorities related to his/her charges. Silence literally means to be quiet. Accused's right to remain silent during the arrest and proceedings arise from the presumption of her/his innocence and it's a true strategy to support prohibitions of taking confesses of the crime and make one to testifies against himself/herself.

Right to remain silent during interrogation of detainees is for detainees; Authorities may find it the best opportunity for confession when arrested or convicted offender is in their custody. The silence on this point is the best way to eliminate and prevent these efforts. This right is not only for at the stage of preliminary investigation, but at the hearing of the charge and shall be binding.

Enjoyment of this right will cause to a minimum benefit for accused to guarantee the rights of the defense while accused has no obligation to cooperate with the judicial authorities. In light of this right, as a means to safeguard the rights and freedoms of citizens, accused can remain silent in the face of official questions without having to disclose their personal secrets and testifying against themselves [15].

According to Article 197 of Criminal Codes of Procedure Act (2013),*"Accused can remain silent. If the accused refuses to respond, the refusal will be recorded in the minutes."*

Article 60 of this law indicate that:

"Empathic, deceptive, reluctant and compulsive questions are prohibited in an investigation and statements of the accused to answer such questions and remarks is not valid."

That concept is repeated in Article 195 of the mentioned Act. Obviously, even though the right to remain silent is mentioned in the articles, is concerning a preliminary investigation but this right is not limited to this stage and it is also applicable in the proceedings in court.

Accused in fact and in light of his rights of freedoms and the presumption of innocence, is in a position that the prosecutor is obliged to collect all the evidence supporting the charge against him and the accused is presumed innocent unless the charges is proved.

The presumption of innocence allows the accused to do not affect from consequences of a charge [9] unless it is proved and the prosecution provides evidences that accused can't object them [1].

By recognizing the right of silence as one of the rights of the accused, Two result will appear:

1- Prohibition of obtaining statement or confession of the accused by force.

2- The immunity from any threat or torture to obtain confessions.

Compelled to confess guilt by accused means forcing accused to admit the guilt under the influence of threats, promises, psychological pressure or persecution in favor of court or complaints' benefits. Philosophically the accused may is unaware of the legal issues and with ill-considered remarks the accused may lead to own detriment.

Recognition the right to silence of the accused is one of the best examples of protecting privacy that is justified with human rights [12].

Article 38 of the constitution explicitly bans extracting confessions through the use of compulsion. This article provides:

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

Prohibition of torture is also based on the principle of presumption of innocence. Therefore, if a legal system does not recognize the presumption of innocence, it may prescribe the use of torture [12].

Regardless of the Investigation trial systems which extracting confessions by torture is justified when the accused is silence, [1], but obtaining a confession, information, testimony and oath must be in a complete safe and secure condition and in accordance with the will of the persons.

So confession, report, testify or oath that are made under the coercion or duress, torture or threat, even without feeling any pressure, humiliation or insults, whether achieved suddenly and unintentionally by a police officer or in a continuous and permanent policy, these evidences suffer from lack of legal validity and any conviction based on such confessions, is at risk of invalidation [11].

Article 6 (1) of the European Convention on Human Rights provides that No authority may compel the accused to testify against himself/herself. Although this right is not absolute and governments may have different interpretation of the rights of remain silence for the accused in some circumstances. In such conditions, ECHR consider the situation and the evidence presented by the National Court .

Because "the immunity from not to incriminate oneself " is recognized in international human rights instruments and has been applied by the Strasbourg Court based on the European Convention on Human Rights, but still it is difficult to determine its scope and underlying rationale. In 1993 the ECHR recognized this immunity as part of guarantee for a fair trial that was mentioned in Article 6 of the convention [2].

From the view of The ECHR, "the right of not to incriminate oneself " is not related to some exercise that will not interfere in accused's will, evidences such as documents, accused's exhale, blood, urine and body tissues for DNA test of accused, such types of evidence cannot be excluded from the proceedings [24].

In a related verdict in respect of the right to silence and the prohibition of not to incriminate oneself, French court convicted the plaintiff for failure to provide requested documents to the customs authorities. Plaintiff argued in ECHR that the Customs Department was reluctant to obtain documents from the other ways, and then it tried to force him to provide documents that might provide evidence which lead to his guilt. French court for failing to provide documents sentenced him to pay 50 francs for every day delay. ECHR asserted that in this case, there is a violation of Article 6 (1) about the right to remain silent and not to incriminate oneself. ECHR reason was based on the grounds that special features of the tax and customs laws couldn't justify violating the accused's right to silence and the right of not to incriminate oneself [20].

(8) The right to reasoned decisions

Judges are obliged to include in their verdict the specific law that they refer to them and furthermore they must expressly indicate their reasons that based on them the accused's conviction has been issued.The reason means asking for argument and making argument.In other words, reasoning means written proof for establishing desirable facts.Accordingly, well-founded and reasonable legal verdict is the one which the wise and understanding persons will accept its accuracy of reasoning. This provision may not be absolute but it should have intellectual fulfillment [13].

In fact the sentence must be based on evidence and logical legal argument so the audience will accept that. Therefore, although it is helpful to understand the logic science in this way, but just knowing the rules of logic and reasoning is not enough for Issuing verdict .

Today in Iran law, the quality of court decisions is very important as they are necessarily in written form.As well as the article 166 of Iran's constitution emphasis of this matter. Article 166 provides:

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

Article 374 of the Criminal Codes of Procedure Act (2013) provides that: *"the Court verdict must be reasoned, justified and documented with the laws and principles on which it is issued ".*

The importance of reasoned opinions of the courts is in this issue that the parties should be aware that firstly, the Court has accepted which one of the evidence as a legitimate reason and which one of the reason had no positive value for the court. Secondly, they could determine results of the reasons that have been accepted by the court and the judge how interpreted them So, the effected party can question the reason and logic of the court and can appeal the verdict and request of the higher court to reject the verdict. But what is really matters in this case, is preventing dictatorship in issuing verdicts in the courts.

It means that judge are obliged to indicate in their verdicts that what logic order of evidence made them to reach their decisions and the content of the verdict solely is not enough to express the guilty or innocent of the accused. In a similar provision, Article 214 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts states: *"the court must be reasonable and justified and documented with the laws and principles on which it was issued ".*

Besides the importance of objective evidences that is available for the judge in each case, According to the Article 212 of Iran's criminal codes of Procedure for the Public and Revolutionary Courts, the court must *"rely on the help of God and their own honor and conscience"* to proceed to judgment .

The article illustrates the spiritual and doctrinal character of the judge which should consider conscience and honor and dignity of its place in examining the evidence.So, the interpretation of evidence should be in a way that any other fair judge would admit its fairness and logical characteristic but it should not be interfere with different opinions that exist in law science.

Because the differences in opinions is natural and is appreciated in all legal systems and even would develop scientific knowledge of the justice system .Issuing not reasoned verdict is an offence for the judges. Article 15 (1) of the law regulating judge's conduct, issuing non reasoned verdict law will be sentenced to the punishment of four to seven degree.

Basically, the verdict based on reason is one of the criteria of fair trial. The ECHR has noted this subject in its proceeding .Article 6 (1) of the Convention obliges courts to obtain reasons for their decisions. It should be clear to all parties that the case has been handled carefully and there is an opportunity to appeal the sentence. Although answering to all details in verdicts is not necessary.

In one of ECHR proceedings, the plaintiffs complained a verdict that leaded to unfairly conviction of her husband after his death. ECHR noted that there were a lot fundamental documents that were illegally obtained and the local court has accepted. In this way the accused in his statement was under coercion and has expressed testimonies against himself. Although the local court could simply reject the verdict based on the serious violation that was made to the accused's rights. Because, the accused declared that although he has evidence to prove that he was not in the place of crime in the time that crime was committed, but he preferred to be silent.

ECHR concluded that, given the above considerations and taking into consideration the proceedings in general, the local court has not established sufficient grounds for convictionand the requirements of Article 6 of the fairness of the procedure are not adhered to [21].

(9) Right to Privacy and keeping secrets

Although the crime itself is an anti-social act and is in conflict with the interests of the general public and the victim. But the response of the law as tackling anti-social phenomenon also the offender as well as punishing for the guilty should be considered. The sentence shall be in a way that accused realized the mistakes and gain a second chance to live in the community and in accordance with accepted norms.

It should be noted that all persons who commit crimes do not necessarily have a mental antisocial or sociopathic, perhaps committing many crimes are as a result of economic pressures, cultural poverty, incorrect education, etc. It is natural that such people do not have criminal spirit and they will regret their offences and will realize their mistake.It's not just about individuals, but it's about the vast offenders, so Iranian lawmakers opposed to the public awareness of the contents of record's conviction or their charges as this act conflict the principal of reestablish the offender to live again in society. In other words, the totality of the case that led to the conviction of the accused is a part of his secret and plaintiff's secret and except in some very limited cases, it's been prohibited to publish court proceeding.

Legislators in Article 188 (1) of Iran's criminal codes of Procedure for the Public and Revolutionary Courts, has stated this concept in a very incomplete and unprofessional way:

" The purpose of the open hearing is the absence of barriers to participation in the trial, but before finalizing the order, it's publication in the mass media, will beviolation of this provision and the offender will punish as the crime of libel."

Two points are worth noting about this article. Firstly, it means that after issuing the verdict, it's possible to publish trial's contents in mass media. That is a wrong context. Secondly, in accordance with No. 2819 precedent verdict: For committing the crime of libel, the real intention for lie and harming others should be existed. Thus, the legislature established a crime without its elements that is outside of legislation customs and is incorrect .

So The Note of Article 188 (1) should be amended because this misunderstanding was

possible that after issuing the verdict it's possible to publish the verdict and contents of trial.Recognizing this need, the legislature passed a single article attempts to amend this article, and also amended note (1), and added three notes to the Article 188. The text of the amendment of Note 1 provides:

"An open session allows for people to be present at the trial. Media reporters can be present at the trials and prepare a written report of the proceedings. Reporters can publish them without disclosing the name or specifics which reveal the identity of an individual or social & official position of either the plaintiff or defendant. Violating the last part of this note is considered libel. "

Thus, even if the accused is convicted, publishing proceedings shall be made without any marks that may lead to his/her identities.

Note (3) of mentioned article made an exception. It provides:

" In definite sentences regarding crimes such as: embezzlement, bribery, intervention, collusion, or receiving commission in government businesses, disturbing the country's economy, abuse of authority in order to obtain interest for oneself or others, custom crimes, tax crimes, goods, currency smuggling and in general crimes against government's financial rights, the court issuing the sentence should publish the summary of the sentence containing the identity, position or title, committed crime and the type and amount of the punishment of the convict at his or her own cost in one of the widely circulated newspapers or local newspaper if need be, and will provide it to other public media. That is, providing that the value of the revenue from the committed crime is equal or more than one hundred million Rials (about USD 100,000)."

Article 36 of new Amended Islamic Penal law, has extended the examples for publishing their identities in the media.This article provides that:

"Publication of a final sentence of battle, public corruption or corporal punishment in degree four, and fraud over a billion RLS,If that does not disrupt the order or security, will publish in one of the local newspapers once."

In addition to the mentioned examples, its note states that:

"The publishing of the final verdict of below crimes that its sentence is more than 1000.000.000 RLS in national or mass media is necessary

A: bribery and corruption,B: embezzlement, C: leveraging contrary to the legal provisions on obtaining property by the offender or others, D: interference of ministers, MPs and civil servants in the government and state trading, E: Collusion in government transactions,F: obtaining a commission in foreign trade,G: government officialsabuses against state, H: customs smuggling offenses,L:Tax Crimes,M: laundering R: disrupt the economic system of the country, S: unlawful seizure of public or governmental property."

Otherwise, if the media reporters disclose their records, their action would be tantamount to libel. According to Article 697 of the Islamic Penal Code (section corporal punishment), the person who committed this crime is sentenced up to one month to one year in prison and 74 lashes, or shall be convicted to either of them .

Based on the article, the crime of libel is related to journalist but in practical, there are other people that are present in the court and they also can publish the contents of the proceeding.

Judges, lawyers and professional experts, will be included in those who have access to this information. In this regard, Article 648 of mentioned act states:

"Doctors andmidwives and drug retailers and the persons who as a result of their profession have access to their client's secrets, if they publish these secret unless with the legal authority, they will be punished from 3 month to 1 year imprisonment and the fine of 1500,000 to 6000,000 RLS."

So in general, this article is included all persons who on the occasion of their jobs are aware of the cases (such as clerks of court).Furthermore, in some special rules for disclosing secrets some penalties have been considered ; According to Article 81 Regulation Act of Independence of Lawyers Associations :

"(Lawyer) will be sentenced to punishment of disciplinary Grade 5 in below cases…2. If lawyer because of his profession become aware of clients secrets and disclose them whether mentioned secrets is related to a law practice or whether is related to the honor and dignity of the client."

In addition, Article 12 of the Law on the official experts provides:

'Expert shall keep secrets that achieved of their job ,in case of violation of law , they will be sentenced from six months to two years of correctional imprisonment."

In the latter case, although the Islamic Penal Code has a milder punishment, but Article 12 of the aforementioned Act will have applicability as it is particular.

According to the Criminal Codes of Procedure Act (2013), legislator indicated numerously the necessity of privacy, dignity, honor, social and civil rights of the citizens that some of them are related to preliminary stage and that some of them related to proceedings in court.

Article1,150,146,141,140,195,138,124,96,56,42 ,25,400,352, 353,352,102,91,183,172,154,52, 352 (A) and Article 100(2) and Article 174, 170 and 351 of the following substances mentioned can be regarded as a legal instruments that considered respect for these rights (privacy of the accused, Not disclosing their secrets and respect for human and social dignity) and somehow guarantee of these rights for citizens are considered .

ECHR indicate that all matters relating to the private affairs of individuals and their personal matters in a way that does not affect the proceedings and the nature of the charges, should not be disclosed.But the line between those cases and requirements for public disclosure and confidentiality of the proceedings is very narrow and sometimes non-specific .

In cases where the secrets of the parties affect the proceedings and the circumstances of the case,the principle of justice requires that the secret is publicly published and made publicly available. But if the court decides not to publish the secret, it should consider these cases as exceptions and the court states the reasons of not revealing the verdict.

For example the national court has released information about accused's HIV disease without considering the situation while the accused requested its confidentiality. ECHR in its investigation concluded that there were no convincing reasons to release information in this case. Therefore, the accused's rights have been violated as the court should not disclose the secret [29].

Conclusion

Reviewing Iran Criminal laws and procedures of the ECHR, It's been determined that the

accused have more rights at stage of the proceedings and as a result of cross-examining and the principal of equality, the legislator considered precisely these rights in the proceeding stage.

In addition to the nine aforementioned rights, there some other rights such as the right to be tried in an independent and impartial tribunal , The right to be tried in the shortest possible time, The right to the assistance of an attorney and an interpreter, the right to respect for human dignity and social prestige ,The of accessing to records and information on the evidences, and the right to object to the temporary detention, which all of these rights are required to be examined and discussed.

In regard to freedom of accused, while the criteria and rules for such detention is vague and there is a high possibility to interpret it, but base on human rights principals, the principle is the impossibility of issuance such verdicts. While open hearing and trial is supposed to ensure the public supervision and reduce the corruption in the proceedings but in practical, judges usually allow just the participation of parties and their witnesses not others.

Unfortunately in regard to evidence, despite its sensitivity, the existing Iran law is based on traditional evidence and there is not a competent position for scientific evidences and the Iranian judges review these scientific evidences as presumption and contexts not as reliable evidence as they are in many legal systems. The deficiency of traditional types of evidence such as testimony, oath and confesses is obvious. The legislator has obliged judges to accept these types of traditional evidences and they have authority to determine their value. Other agencies such as judicial police with an independent characteristic should be created to search and investigate for providing such evidences.

According to recognizing human rights and values universally and similarity in international instruments and conventions, the Iran's legislator and Iran legal system should try to adopt those rights in two levels of legislation and practical, otherwise there would be some political consequences.

It's seems that there is some progress in the amendments in new codes of Criminal Codes of Procedure Act (2013) and it's a good signal for development in judicial security in trials related to accused. In this regard, comparative studies have an important role in creating public sensitivity to the issues of citizen security and reform regulations.

References

1. Ashuri, M., 2006, Criminal Procedure, Samte Publication, Tehran
2. Ashworth, A., Mike, R., 2005, The criminal process, Third edition, Oxford University Press Inc., New York.
3. Criminal Codes of Procedure Act, 1999
4. Criminal Codes of Procedure Act, 2013
5. Gaines, Larry K., Miller, Roger Leroy, 2005, Criminal justice in action- The core study guide. CA: Wadsworth, Third edition.
6. Iran's criminal codes of Procedure for the Public and Revolutionary Courts
7. IslamicPenal Code 1996
8. IslamicPenal Code 2013
9. JafariLangroodi, M.J. 2002, Extended Law terminology, GanjeDanesh Publication, Tehran.
10. Mehr Pour, H., 2007, Human rights in international instruments and the position of the Islamic Republic of Iran, Ettelaat Publication, Tehran.
11. NourBaha, R. 2007, Torture in United Nations Convention 1984, Bar Association Journal, No. 149.
12. Qpanchy, H., DaneshNari, H.R., 2012. Dual samples of crime control and

criminal process and fair trial, Journal of Criminal Law, Razavi University of Islamic Sciences.
13. Salehi Rad, M., 2003, Reviewing the reasoning of court decisions, Law of Justice Journal.
14. The constitution of the Islamic Republic of Iran
15. Yekrangi, M., 2007, Human rights' supports and guarantees for domestic law and the international system, Legal Research, No. 38.
16. Al-Khawaja and Tahery v. the UK, 15 December 2011, ECtHR [Grand Chamber]
17. Borotyuk v. Ukraine, 16 December 2010, ECtHR
18. Colozza and Rubinat v. Italy, 12 February 1985
19. Craxi v. Italy, 17 july 2003
20. Funke v. France, 25 February 1993, EctHR
21. Gradinar v. Moldova 8 May 2008
22. Lüdi v. Switzerland, 15 June 1992
23. Riepan v. Austia, 14 November 2000
24. Saunders v. UK, 17 December 1996
25. Smirnova v. Russia, 24 July 2003, ECtHR
26. T. v. the United Kingdom, 16 December 1999, ECtHR [Grand Chamber]
27. Van Der Tang V. Spain, 13 July 1995
28. Vidal v. Belgium, 22 April 1992
29. Z v. Finland, 22009/93, 25 February 1997