

Fair hearing in the new Code of Criminal Procedure

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Abstract: This paper reviews the achievements and innovations of the new law, it reviewed the terms of the offer. Due to the extensive study, it will follow in a few episodes. Due to the extensive discussion of this study, it was five seasons in the lift. The first chapter, an overview of the research were studied, studied literature will be the second season. The third chapter is devoted to the international standards of fair trial Yaft. dr the fourth quarter to review the achievements and innovations of the new Code of Criminal Procedure and finally in the fifth chapter is dedicated to the discussion and conclusions.

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Key words: justice, due process, rules and nature of the proceedings, the new Code of Criminal Procedure.

Introduction

One of the fundamental issues for the rule of law, justice and human rights It results because justice is right and must not be acted contrary to it, if it does, By-Dalty, By-Dadgry and ignoring the rights of citizens. Tgatngy relationship with the concept of justice is respect for the rights. In truth, of justice, of law, so By-Dalty behavior is against the law and violates human rights. In fact, due process, personal jurisdiction in the light of the law with regard to the respect for civil rights and Zmynh-Yy to promote the rule of law. This law, by national and international norms, in the form of some principles have been systematic.

The courts have been established to provide justice and conflict resolution so its performance should be considered sensitive and its Foundation have formed. The most important role in achieving the goals courts have judicial powers and that these objectives will be met increasingly have to comply with some of the principles that the health care and justice, the decisions of the pre-guarantee the.

"In recent decades, human rights issues and the need to comply on all branches hang rights such as the Code of Criminal Procedure, it is observed that legal Nzam-Hay escape the clutches of an inquisitorial system, the system takes steps charges -Darnd and all their efforts and try to have as fair a hearing virgin rights and individual liberty be observed at all stages of criminal proceedings can be said in summary proceedings, the time just to be able to balance

Problem Statement Research

Stating the rules of criminal investigation (whether formal or substantive) to the administration of justice and the restoration of order has been altered by the crime should be two important general principle "an effort to maintain public order" and "protect and respect the rights and freedoms individual

"in mind at the same time and simultaneously. The first purpose (trying to maintain or restore public order) in older schools of thought, the primary objective of criminal law In other words, the sole purpose of data. But today, under the new doctrines of criminal law, the purpose of criminal law acuity and intensity could lead to lost and not Qanvngzarkyfy pretext of maintaining public order constrains individual freedoms and human rights being ignored or even to be weighed down condemned the but conditions should be set in such a way that at the beginning of the action of the representative of society in pursuit of criminal offenses (prosecutors and other members of the court) and Frdmthm, with equal-rack weapons have equal access to the judicial battle is clear, however, society step in this regard, full realization of equality of arms is practically impossible because of the criminal case (the court) equipped with means of detecting crime and have all the manpower, facilities and equipment, countless great power and his Hymnh limited to geographical boundaries not the country and through international agreements judicial assistance and extradition, the accused can summon the judicial system and practice in every corner Dnyabh before he was dealt and at the same time have basic responsibility for their actions. But on the other side individual, which is often the weakest strata of society and the weakness of the stimulus and social factors that led him into the abyss of crime and in some cases out of the will of natural factors, such as physical or psychiatric comorbidity mental illness, he provides regarding deviations are polluting.

In such circumstances, speaking of equal access to the courts, accused of humor. It would be, however, because they are accused of facilities and equipment is necessary for self-defense is a natural material and equipment be his defense against the power and

strength society and public institutions in charge are very few. Since virtually identical to the concept mentioned the possibility of the prosecution and the accused is not allowed to impose this obligation on government and public institutions is impossible, at least it should be emphasized that approach and direction of the side where the criminal justice system not necessarily have to it seems that in the long run enable and current status of the guarantees defendants the opportunity to provide justice.

In recent decades, human rights issues and the need to respect all legal branches including criminal procedure shadow, the very legal system to escape the clutches of the audit system, the system will, and all the alleged walk the procedure and are doing their best just to try to monitor the rights and individual freedoms in all stages of criminal proceedings (including proceedings before, during and after trial proceedings) should be observed. In short we can say that hearing, when a fair balance between the interests of society and the defendant is able to pay and the defendant are totally free, and while that all the guarantees necessary for their defense, the case will be tried at the same time it should be emphasized that the accused and the prosecutor in a criminal proceeding simply are not present, but victims of crime, witnesses and informers as part of this process. So the fact that criminal proceedings be conducted in a fair manner must have standards, principles and rules that guarantee the rights of all parties involved in the criminal case and keep.

These principles are at the most prestigious international instruments have been agreed upon by the international community arrived. This study aims to examine this approach only at the stage of preliminary investigation and fair trial guarantees in this regard, special emphasis on the rights of suspects and accused have. This stage of criminal proceedings (preliminary) compared to the other stage is very important because at this stage the one hand still holding criminality

As with all stages of a criminal proceeding and therefore should not, the presumption of innocence is a priority any judicial proceedings and on the other hand, formed the basis of a criminal case at this stage. The purpose of the preliminary investigation in this article, follow-up and investigation before proceedings in the courts of all actions, whether these actions are done by the police and the judiciary liaisons or by court officials as investigator and prosecutor. In this article I have tried some common rules that apply in each of these stages of exploration and evaluation criteria Shvnd.ma fair trial concerns the preliminary inquiry on the two topics studied. In the first part, the principles and regulations for the right to freedom of Customer stripping the "principles and regulations for

the right to defend under investigation" raised right and we have studied the topic of the second. It should be mentioned that this study mainly aims to examine the gaps and shortcomings in our legal system and the study of international obligations in this regard has tried to provide solutions.

Importance and necessity of research

Contrary to the presumption of innocence of the accused before trial could fundamental rights such as the right to freedom of movement is denied or under the control of judicial appointments, lose some of their rights and freedoms. Since this stage of the criminal proceedings, very important in shaping future results will be the case, however, at this stage, the possibility of coercion, intimidation and even torture by the police and court officials in order to obtain confessions there. This phase is initiated criminal proceedings and it is here that the judicial authorities or to individual enforcement officials are suspected on the basis of evidence, to bring charges against him, never deny him freedom of movement or hand to detain and arrest turns.

Research purposes

It also delves into substances that the rights of the accused and the victim's mind, compliance and implementation of international instruments to fair trial has to pay.

Field of study

in addition, this document has been published and the use of databases and internet sites.

Research questions

1. The rights intended for the parties to what extent is close to international standards?

Hypotheses

1. The right to a fair trial in Iran is closer to international standards.

Types and methods of investigation

This research is fundamental practical in nature and due to the use of research methods, in terms of being fair trial criminal proceedings is one of the most useful topics. The method of use of documentary and library, papers, Internet and jurisprudence is gathered so that all relevant research and taking notes first and then data can be derived.

Definitions of important words and phrases

Fair hearing

Fair hearing, one of the fundamental issues for the rule of law, justice and human rights is; zyr justice, and should not be acted contrary to it. If so, injustice, tyranny, and ignoring the rights of citizens. Justice, the concept of rights, is a close relationship. In truth, justice, behavior in accordance with the law, the injustice, the behavior is against the law and violates human rights. In fact, a fair trial, the trial of a person in the light of the law and with due respect for citizens' rights and the basis for promoting the rule of

law. This law, by national and international norms, in the form of some principles have been systematic.

Mentioned principles, including Prnsybhay concerning the rights and freedoms of the accused, the beginning stage of the proceedings until a definitive court verdict of acquittal or conviction in connection with the prosecution of a person's a person, even the next step. Likewise, the principles governing humanitarian and criminal law also covers Prnsybhay investigation and prosecution.

These principles are as follows:

1-The principle of legality of crimes and penalties:

Today, the legality of offenses and penalties, as a principle, is recognized in all countries. This explains the fact, that in the light of national and international norms, which act is a crime and what kind of punishment for them is determined. The principle of legality of crimes and penalties, in fact, the basis of the rule of law in any country Ast.mad27 ° of the constitution of the country, in this context, says:

"No act is considered a crime, unless determined by a law promulgated before the commission. No person can be pursued, arrested or detained except by law. No person can be punished but the court with jurisdiction and in accordance with the law promulgated before the offense. "

Similarly, Article 15 of the International Covenant on Civil and Political Rights states:

"No one is due to acts or omissions which when committed, was criminal according to national and international laws, will not be condemned. Nor shall a heavier penalty than the one that was applicable at the time of the crime, will not be set. If after the crime, the law prescribed severe penalties, the perpetrator will use it. "The country's Penal Code, in Article 2-3, in this connection explicit.

2. The principle of personal criminal responsibility:

Principle means that criminal liability can not be passed from one person to another. Namely the crimes of one person, another person can not be responsible for recognition. If, Article 26 of the constitution, in the field, says:

"Crime is a personal act. Prosecution, arrest or detention of an accused and the execution of penalty, can not be passed on to someone else. "

3. The principle of equality under the law:

Article 22 of the constitution reads:

"Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan, whether men and women have equal rights and duties before the law. "International norms also emphasized this principle, the government's commitment in recognizing the same rights for all individuals, without any discrimination of race look, color, sex, religion, and stipulates the

equality of persons before the courts and tribunals and to emphasize.

4. presumption of innocence, the main mode:

This principle is one of the oldest Prnsybhay criminal law. If stipulated in national and international laws and oppose it as opposition to the law. Person detained before trial, condemning that person, not following the rules as precautionary measures, anticipated. Even if they are legally sufficient reasons in relation to detain a person be on hand. This principle, in all stages of the proceedings, are considered. In the context, Article 25 of the constitution, states:

"Presumption of innocence, the main mode. The defendant, until the final decision of the court is not competent sentenced person, is guilty. "Also, Article 14 of the International Covenant on Civil and Political Rights, in this regard says:

"Everyone charged with a criminal offense has the right to be presumed innocent, until proved guilty according to law." Similarly, Article 4 of the Penal Code and Article 4 Interim Criminal Code for Courts in the country (in this post, for brevity, called the criminal Procedure Code), the case is clear.

5. tell the charges to the accused:

Article 31 of the constitution states:

"The accused has the right upon arrest, be informed of the accusation." Article 31 of the Criminal Procedure Code reads: "justice police after his arrest and facing his own person, and explain the reasons he deems involvement."

6. The principle of the right to silence:

According to the presumption of innocence, the person should not be forced himself to blame, if paragraph 6 of Article 5 Criminal Procedure Code of the country, in the field, says:

"Suspects and accused the right to remain silent and refrain from making any statement, although by police or judicial authorities placed under the open press." The defendant, in all stages of the proceedings, the right to record and judicial officers are responsible as soon as that person, he understood this principle will be charged.

In this case, silence is not consent in any way meant to be. Even, in some cases, silence, the person is acquitted. On the other hand, the accused has the right to benefit from cross-sectional silence is, at any stage be asked to speak and said otherwise, remain silent.

7. Principle of torture:

Convention against torture and other cruel and punish other cruel, inhuman or degrading treatment, in his first article, defines torture as "any act of deliberate, the effect of which severe pain or suffering, whether physical or mental against the individual, in order to obtain information or extracting a confession

from him or a third person applies, is torture. Also, individual punishment, an act he or a third person has committed or is suspected of having committed, or coercion based on discrimination of any kind, when such pain or suffering, or to stimulate and encouraging or with the consent or lack of consent or acquiescence of a public official or any other source is the owner, is considered to be torture. "Torture can be physical or moral coercion species or any illegal manner in Thqyq. qanvn by country, in its article 29, emphasizes: "torture of human beings is prohibited.

No one can even discovering the truth from another individual who is under investigation, arrest, or imprisoned or sentenced to punishment, to torture him, or that he will. "Article 30 of the constitution says, statement, confession and testimony, the defendant or another person by means of compulsion shall be invalid. Likewise, Article 7 of the International Covenant on Civil and Political Rights and Article 5 paragraph 4 of the Criminal Procedure Code, reflects this principle.

8. The illegal arrest:

This principle, which means, it should release the accused person, be respected, meaning that no one can be arrested without warrants. Also, the above principle implies that when a person recorded by the judicial officers or prosecutors (prosecutors) are banned, this involvement should be documented for legal reasons; otherwise it caught their illegal and a crime. In paragraph 1 of Article 9 of the international covenant on Civil and political rights says that:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary (unlicensed) arrest or detention (prison) said. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. "Freedom is the birthright of every human being has the right by law, in several respects because the public interest and the public interest is limited; because on the one hand and the other human rights and freedoms has been static, criminal justice, which aims to reform and re-offenders training and support and defend the community.

In the above paragraph, indicating the legal, because it is mentioned together two interests are in conflict. One person's interests and protect the rights and freedoms of its citizens and the interests of society in criminal justice. So in order to bring balance between the two interests, the law restricts these freedoms. In connection with this principle, paragraph 2 of Article 27 and paragraph 1 of article 24 of the constitution and 414-417 of the Penal Code also states that, to avoid Atal word, we refrain from bringing any in the inscription.

9. The principle of the attorneys:

Today, one of the pressing issues of law, choice is a lawyer, who as a principle of international norms, the constitution and laws have been adopted. In fact, the defense attorney, a relationship based on trust and credibility between the lawyer and his client. According to the trust and licenses, attorneys can When a person is arrested until the end of the hearing, at all stages, to be present. In addition, the lawyer, the right to access all documents that prosecutors (prosecutors) collected, is capable of. The principle of Article 31 of the constitution, such a forecast that: "Any person can be charged for disposal, or to prove their rights upon arrest, attorneys in criminal cases to determine ... the destitute, appoint an attorney. The confidentiality of conversations, correspondence and communications between the accused and their lawyers, of any kind is inviolable. "

Similarly, paragraph 3 of Article 18 of the Criminal Procedure Code, Similarly, Article 14 of the International Covenant on Civil and Political Rights, in context, it calls.

Respect the choice of a lawyer, is one of the most important principles of a fair trial because of all human beings, especially in our society, not a lawyer. So what happened in the trial of criminal and civil Qi, active involvement of counsel, is a condition for justice. Fortunately, in the end, in our country, choosing a lawyer, has been promoting. While in the past, attorneys have the right to attend the trial. However, what seems to be present during the investigation and prosecution. There were only law firm and organized for the defense, in the presence of the judge, the prosecutor (attorney) or the person was reading. Now attorneys can be present in court. This positive change is in the field of justice.

10. The principle of access to an interpreter:

When it comes to the principle of access to an interpreter, the person alleged to be tried in a language other than his mother. This principle, in all stages of the proceedings, intended to be, otherwise it all run, which took place from beginning to end, would be invalid. This principle is recognized in the 1949 Geneva Convention, so that the accused used his native language interpreter.

The principles of the constitution, in its Article 135, stated:

"If the language in which the case will be tried by it, they have the right to know the materials and documents in the court case and speak the native language, it will be met through an interpreter." So that the above article is concluded, parties also the counsel, allowing translation of documents relating to judicial proceedings and have the material presented in the session. It should be added, moreover, if a

person is deaf or dumb, an interpreter has the right to benefit from.

11. The principle of legality courts:

One of the most important preconditions for fair trial, namely the legality of the court. Courts, which are established by law, must have their competence and sphere of competence of any court of law certificates shall be established by law. If Article 14 of the International Covenant of Civil and Political Rights, the states:

"Every court that hears the case, must be made by law."

12. a public trial:

This principle, now everyone, without exclusion, is, in the proceedings. That person will have the right to participate in the proceedings and is aware of the court proceedings. In other words, everyone can have a chance to see the proceedings in person aware of the court's judgment. Because of continuous and unhindered participation of individuals in the courts due to build credibility and trust of people in the courtroom. If Drfqr1 • article 128 of the constitution says:

"In the courts of Afghanistan, trials shall be held openly. Everyone has the right to attend trials in accordance with the law. "The purpose of indicating the law, which has been mentioned above, is that in some cases, for ethical reasons or family issues or maintain public order, justice, Series Announced .

13. The independence of the judiciary principles:

Ironically, an important element of justice is independent of government. This means that the judiciary is completely independent in their judgment and not be under the influence of other branches of government. Ironically, in many cases because the composition of the court independence, impartiality and independence of the judiciary and the election of judges in court should be pushed back guarantee principle in paragraph 1 of Article 116 of the constitution, reads:

"The judiciary is an independent branch of the Islamic Republic of Afghanistan."

14. ensure that the retrial:

This principle means that it can not be a person of the same crime more than once tried and punished. If once the final decision of the court in relation to the acquittal or conviction of the person is issued, once again, that person should not be trial and punishment. In fact, a fair trial, and a series of national and international norms, in order to maintain and the general principles of criminal law and individual rights and civil liberties. Fair trial, to bring the image of justice, of human rights and freedoms in the judiciary organizations, which, in fact, a step to strengthen the rule of law in the country.

The concept of criminal jurisdiction and its variants

Competence means competence, qualifications and merit. And in terms of ability and competence jurisdiction to investigate certain crimes specified by the legislator My-Shvd. slahyt criminal authorities for reasons such as to expedite the proceedings, maintain public order and security, ease of collecting evidence, the virtual ... evenly divided

into the following types:

1. inherent jurisdiction;
2. The local jurisdiction;
3. The personal qualities;
4. Additional qualifications.

Inherent authority

The mandate of the legislator on the basis of the type of crime or offense or crime punishments for court-track set. Inherent jurisdiction, tied with public order and interest of the community and not removable. Abuse of authority inherent causes of absolute nullity action that it occurs even though the result of that vote is correctly issued.

Local authority

The necessary and sufficient conditions legislative and judicial authorities with the duty of the local authority (jurisdiction) in the investigation of criminal matters.

In many legal writings and even in-laws (Article 51 .d.k 1378) relative merits means the local authority is used.

"Location" on the topic Procedure qualification, but rather only means location, the jurisdiction. So when it is said authority or judicial body, in examining the crime is not a crime within the jurisdiction of the local authority in question is not a judge or court to have jurisdiction to N-Ra.

The local authority

1. Credit scene of the crime; (paragraph A of Article 51 .d.k)

Although in many cases the diagnosis is located Ayn-Kh local crime, is the easy, but sometimes not easy to detect the crime scene. For example, locate committing a criminal act "cyber" in cyberspace and exchange of data, but not as easily as possible.

2. Discover the offense; (Paragraph B of Article 51 .d.k)

3. The arrest; (Paragraph B of Article 51 .d.k)

4. Stay accused or suspected; (paragraph C of Article 51 .d.k)

5. The most important of crime; (Article 54 .d.k)

6. initiate prosecution court. (Paragraph A of Article 51 .d.k)

Personal jurisdiction

The jurisdiction of the courts with respect to age, occupation or social status of the defendant.

This type of qualified legal authorities find similar N-Ra Nmy-Knym-and not Qazy- determined according to the characteristics of the accused.

1. Age charged to credit;

The children are Dadgah-Hay the formation of measures aimed at scientific, reasonable and legal for children to commit crime again are not.

2. charged to the credit of job and social status;

Accordingly, we see the formation of two types of jurisdiction:

A) The Armed Forces Judicial Organization;

It has jurisdiction over all crimes military personnel but also to crimes committed by military personnel while on duty or in the service of attending the proceedings stopped.

B) Penal Court;

According to Article 4 of the Law amending the Law on the Public and Revolutionary Dadgah-Hay, all charges Tehran Penal Court is the persons subject to the jurisdiction clause. People like the members of the Expediency Council, members of the Guardian Council, Parliament, ministers and deputies of them, ambassadors, prosecutor and head of the GAO, holders of judicial base and ...

3. The validity of the religious character of the accused;

Given the role of Rsh-Hay Clergymen in different, specific reference independent courts and religious courts to deal with crimes of this class is stopped.

Additional qualifications

In terms of the reference authority or judicial authority, in accordance with law, in addition to the regular jurisdiction.

Criminal justice authorities, including the court, whether public or private, in Parh-Ay additional competence to handle cases outside the competence of the judiciary is inherently local or cite them. Additional aspects of criminal jurisdiction, criminal justice policies based on multiple legal system is specifically mentioned in the law, so the courts or individuals to claim to protect national interests or to facilitate claims processing, authorization extension or limitation of competence they do not.

Additional qualifications criminal cause

The most common cause additional criminal jurisdiction:

1. Crime Unit, carried out by multiple people.
2. crimes, it will be by one person.
3. After the verdict, determine the sentenced person, Mhkmyt-Hay more.
4. crimes together, have Tommy connection.
5. ways that a criminal case be transferred.
6. rogatory
7. losses claimed in the criminal court, caused by the crime.

The difference in eligibility

In principle, every court must consider before, and then establish its jurisdiction to handle. Does not require the issuance of qualification and begin to address implies, but does not require the issuance of special competency in the field and send the case to the competent authority.

Reference following the issue of the lack of jurisdiction, the case is referred to the court recognizes no obligation to accept your need to acquire its jurisdiction. Perhaps it may also negate the competence of the court itself, the third court competent to hear the case the court to handle it.

According to the court if they are looking to be the first jurisdiction in the dispute or conflict within the competence of authority stems. Article 58 of the Code of Criminal Procedure, the conflict resolution is referred to the Civil Procedure Code.

Articles 27 to 30 of the Civil Procedure Code and it is a general rule of deduction is an authority higher than the parties to the dispute is resolved. So in the event of a conflict between local jurisdiction of the court, dispute, court appeals, except N-Kh these two courts are not in a province in which case settlement with the Supreme Court. In the event of a conflict between the court's inherent jurisdiction of the Supreme Court will always be a dispute.

High in the competency of the terms of reference for the parties to the dispute shall be applicable.

Conclusion

Fair trial is one of the fundamental issues for the rule of law, justice and human rights is regarded as justice, rights and should not be acted contrary to it, if it does, By-Dalty, By-Dadgry and ignoring the rights of citizens. Tgatngy relationship with the concept of justice is respect for the rights. In truth, of justice, of law, so By-Dalty behavior is against the law and violates human rights. In fact, due process, personal jurisdiction in the light of the law with regard to the respect for civil rights and Zmynh-Yy to promote the rule of law. This law, by national norms and the International, in the form of some principles have been systematic.

The courts have been established to provide justice and conflict resolution so its performance should be considered sensitive and its Foundation have formed. famous virgin fair proceedings and tries to rights and individual liberty be observed at all stages of criminal proceedings can say in summary proceedings, when a fair balance between the interests of society and the accused to be able to pay while the Tzmyh-Hay accused are totally free and is necessary for his defense, the trial will be".

"Hearing the word composed of two words" that "and" clay "that it meant first and second means to

achieve fairness and justice is dealt out. After the hearing or appeal to the person to whom it is dealing. So word to convey his proceedings dealing with justice and stems. "Dadstandn proceedings and the proceedings for the indication. In the legal literature the term is meant to describe By-Trfy and integrity, freedom from bias and self-interest, just, fair, impartial and equality between conflict evenly applied. This fair trial on the same meanings as in the phrase implies".

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