



Balance among Rights of Complainant, Accused, and Society in State Procedures

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ABSTRACT

One of the most important human aspirations in the history of penal justice in a fair trial based on the realization that providing the complainant and the defendant may be right. According to the rights of the accused and the complainant is considered the most important issues in the field of law. This follows closely on the principle of human dignity in Islamic Law and the principle of justice and security are of particular interest. But because the rights of the accused are subordinate to the rights of the complainant and the complainant or the complainant's rights legislation primarily targets; secondly and indirectly the rights of the accused have been taken into account, therefore, the laws of many countries in order to guarantee the rights the complainant as a victim of the crime, the ways predicted in the discussions and the results are presented and analyzed. In this paper we investigate the unknown that the criminal protection of the rights of the complainant and defendant in the process of a fair trial (with an emphasis on developments legislative Code of Criminal procedure Act of 2013) is how to pay.

Keyword:

- / criminal justice
- / the accused
- / the complainant
- / a fair trial

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INTRODUCTION

The frequency changes in the criminal procedure Act 2013 to protect the rights of the victim and the accused is predicted.

When we talk of the rights of the accused in the criminal justice we mean is that we are faced with is whether or not human or lawful or unlawful charges attributed to him. It is the duty of the judicial system in such a case to protect individual rights and to protect their social rights. Since man is a living creature with his rights should also be respected, especially if it's right for issues in particular were accused of committing the crime the need for laws there is Meanwhile regulations concerning the rights of the defense, these important developments and respect and protect him from the very beginning of the criminal process (discovery stage mass) is required by the legislator. The right to a lawyer and doctor and make phone calls to relatives in the state law enforcers, including the rights of the accused at this stage. Also, the rights of the accused in the preliminary investigation to the specific context (i.e. the investigator) have changed completely. Adversarial up research and giving equal opportunity to all parties to the conflict have been major objectives of legislation in this law. The victim should also according to their rights and legislative support with the fewest problems could resort to the judicial system to address their rights, so the legislature to enact laws regarding the rights of the complainant and defendant as well as solutions to support the rights than discussed in this article and solutions to improve the protection of litigants and their rights will be discussed.

1. Private complainant and victim rights in the criminal process

Supportive Attitudes mean recognizing the rights of the victim for his prosecution and preliminary investigation. Based on the principles of criminal procedure, some of the criteria to protect the victim directly and others indirectly determined the victim to protect.

1.1 Points victim and the complainant in the preliminary investigation stage

1-1-1 possibility of an oral complaint

One of the complainant's rights at the stage of preliminary investigation the possibility of an oral complaint from him is it in Article 37 ref. Adopted in 2013 forecasted.

1-1-2- possibility of a complaint by a lawyer

Iranian criminal procedure victim in the criminal process from start to finish can have a lawyer presence of a lawyer from the victim in the criminal process, including cases in which the victim is undeniable support. In most cases the cost of paying lawyer's fee, the victim is having difficulty in using such opportunities. If the legislator further simplification of the victim's legal counsel and the victim meet this requirement will be more willing to appoint lawyers.

1-1-3- prosecution of criminal complaints by the judiciary

In addition to the private complainant or defendant can sue in person or by counsel, in cases where criminal prosecution, subject to the complaint the complainant and the victim is incapacitated and has no guardian or no access

to their installation would also delay or guardian in accordance the disadvantage to be incapacitated, the presence and intervention of a guardian or guardians installed and if your parent or guardian will have committed a crime or interference in the private prosecutors as temporary guardian of his determination or criminal prosecution, and necessary measures to preserve and collect evidence and to prevent the accused from escaping constitute a crime. The sentence in cases where the victim, but due to some reasons such as anesthesia or guardian is not able to complain as well. Of course the person Daffy only in criminal cases which comply with the financial aspects mentioned in this article are mandatory and non-financial cases, Daffy can personally make a complaint. In addition, in cases where prosecution is subject to the complainants, if the victim is a child or is insane, the guardian, or legal guardian despite the ward's best interest not to sue the prosecutor to pursue the matter. Also in who causes such as physical or mental disability or age, are incapable of litigation, prosecutors are pursuing the matter with approval.

The question can be raised here and that is a mistake if the complaint referring a complaint of the victim or the person who accepted him and it referred the guardian or lawyer, or prosecution office with what are withholding handle faced? In response should be distinguished between the offenses passed and unforgiving, so that way if convicted of crimes that need to be followed to start a private prosecution, investigation branch should be the subject of continued and the decision is appropriate, but if the offense need to begin to pursue a private prosecution, the investigating authority must archive file because the prohibition on appointments or cessation of prosecution due to non in idem will only solidify the victim was right. In addition, the prohibition on appointments and cessation of prosecution in the law and the absence of the complainant is not a member of any of these items.

1-1-4- right to leave the chase

According to Article 79 ref, in passing offense, the complainant could request leave to pursue his indictment. In this case, the prosecutor indicted leave. The complainant can be re-charged chase to chase only once a year from the date of the leave request.

1-1-5- right to study and obtain copies of the case papers

According to Article 100 ref, Approved 2013 "When complainant can research, introduce and to express your intuition and participate in the investigation, preliminary investigation or other securities case is not incompatible with the need to uncover the truth, or at his own expense to study them or copy image take. "

1-1-6- right to request the provision of losses

According to Article 14 ref. "The complainant can recover all the material and moral losses and gains a realistic demand caused by the crime." In this regard, Article 107 of the Act provides "the complainant can ask the prosecutor to provide your losses. If this demand-based acceptable evidence, questioned the garnishment issued." In other words, if the complainant is not sufficient to consider magistrate reasons, denies the complainant's claim, and rejected this demand is not objectionable.

1-1-7- right to protest some appointments

Private complainant is entitled to appointments, filing records (Article 80), the suspension of prosecution (Clause 2, Article 81), the stop research (Article 104), the Prevention and cessation of prosecution and (paragraph A of Article 270) object.

1-1-8- right to request an investigation or local inspection

According to Article 123 of the Criminal Procedure Code, if located to explore and clarify the matter, local search, or examination of the location be necessary or defendant or the complainant's request, examination of the location or the local inspector to investigate. Examination of the location and the local investigation by the investigator or him Justice is done by restraining orders.

1-1-9- The accused

With regard to the presumption of innocence, judicial officials should summon anyone unless there is sufficient evidence to summon him. In other words, although the only complaint is sufficient to start proceedings but only complained to summon or arrest the accused without reason, is not enough.

1-1-10- The accused

The defendant was summoned on time or deadline shall be present in court if he does not appear to be a valid reason, or at least excuse to declare otherwise, draw a no magistrate At the cases first summons is sent, the accused warrant issued in accordance with Article 180 of the criminal procedure code are listed.

In the event that a fugitive accused of being a magistrate seems to be established, determining the validity of the warrant by the judiciary liaisons is to blame wherever they are found, draw and present that to the investigator called the arrest warrant Mobile is said to. The accused, if for any reason is not possible within the designated liaisons the accused's failure to report. In addition, in case of necessity, the magistrate can put the claimant warrant for a certain time to introduce him, restraining jurisdiction related charges attract and deliver.

1-1-11- Interrogation

The presence of the accused to judicial authorities on the basis of a warrant or summons or on the basis of the charges and explained the reasons for the charges, the adjudicating authority began to interrogate the accused. The accused prosecutor is obliged or immediately after the investigation starts and if not possible, within twenty-four hours after being taking him by Officers of Justice, the provisions of Article (98) of the Act attempts to investigate.

1-1-12- audit and inspection of homes, places

Article 137 of Code of Criminal Procedure, which stipulates: "Audit and Inspection homes, places of package vacations, and audit and inspect objects in cases where the basis of circumstantial and hearsay evidence, arguably the presence of the accused or the discovery toys, and the reasons for crime there are, by order of the magistrate and by indicating the directions suspicion in the case is done."

In addition to entering private homes without request or permission of the owner's home when it is permissible that the crime was committed and there is a strong suspicion that the accused can be arrested in a residential home or suspicion that the reasons for signs indicative of the crime or machinery and equipment that can be found in homes.

1-1-13- referring to expert

In this regard, Article 155 stipulates "If the interrogator directly or expertise to do it necessary to apply for one of the parties, refer the matter to the bachelor's exports. The investigator should draw on the expert opinion is necessary to precisely determine it. "Subject matter experts selected experts from the magistrate is obliged to do, unless it is at the discretion of the investigator or the subject of the rejection of the expert's excuse that the If not, an expert before proceeding to the expert, shall declare in writing to the magistrate.

1-1-14- Juridical Officiation

The investigating authorities can take action against crime outside its local authority outside its jurisdiction or command it to give enforcers outside the scope of their places. Therefore, in such cases if measures such as obtaining witness statements, investigation of the complainant resident in another jurisdiction, examination place, local research and so on which are necessary jurisdiction to hear a case, you must reference the recent the competent judicial authority for doing so, agencies be given to the actions carried out under the supervision of the authorities. This so-called "juridical officiation" is called.

1.2 Experience the victim and the complainant in the trial and post-trial stage

Summon witnesses and informants 1.2.1 or draw

Witnesses and informants event, if necessary, be summoned by the investigating authorities in the event of absence for the second time, the warrant is issued. If the witness or Get for their absence does not excuse the draw. But if they have a reasonable excuse and the investigator to accept that excuse again summoned, and in the absence of a draw. The law required witnesses to testify. So even if caught with reference to research and transfer to the court to testify cannot after announcing that he would not testify in this case fails and must be released immediately.

1-2-2- passed right over offenses

Article 100 of the Penal Code stipulates: in crimes according to the passage, the passage of the complainant or private claims depending on the case, cessation of prosecution or penalty is suspended. This is because the right to such support will facilitate and accelerate the discovery of truth makes it easy to track and investigate crimes and victims criminal process approaches.

1-2-3- request to leave the trial

Such a guarantee that the victim lever position can be used to compensate for losses caused by the offense and give compensation if the accused does not appeal or reluctant to pursue compensation. Basically, the accused tried to get rid of and lack of exposure to compensation on the basis of criminal conviction.

1-2-4- return of property and objects

Legislator for the restitution of property obtained by crime is the duty of the judgment of conviction, civil proceedings as presented here requires a due process complaint and the due process and to the complaints, in addition to the sentence warrant will be the return of property. It is not clear when the return of property, the property claim in terms of Civil Procedure requires due process petition will be presented. In fact, when you do not need to submit a

petition for return of property has been judge responsible for the crime.

1-2-5 Magistrate rejected the objection

Objection should be rejected until the verdict comes into action when trial it refuses to accept the deal and handle Substitute judges or referred to another branch. In the absence of substitute judges or other subsidiaries filed for court proceedings closest parallel is sent.

1-2-6- need a lawyer

Article 347 of Criminal Procedure Act of 2013 provides: "A defendant can apply until the end of the first trial of the trial lawyer for her determine if applicants meet the debility, of the Lawyers jurisdiction and in case of impossibility of the nearest field judiciary, lawyers for the accused. In the event that the lawyer request honorarium is determined, in accordance with the measures taken his honorarium court determines that in any case the amount of honorarium should not exceed the tariff. Honorarium of the funds paid judiciary. Note: "If the court and the defense lawyer for the victim lack the financial ability necessary, take action under the provisions of this Article."

1-2-7- determine Translator

If the victim, Farsi (the language of the court) does not understand, or because of conditions such as deafness, being dumb, stuttering, and so it is not able to communicate properly with the court, should his demands for a proper understanding of the people in this regard, we can use a translator and specialist materials 367 and 368 Code of Criminal procedure Act 2013 refers. These services should be freely available to the victim.

1-2-8- satisfy the complainant leave to prisoners if possible

Also in this article Section 3 of Article 520 provides that in cases where prisoners have a private complainant and the prosecutor's discretion or judgment enforcement judges, furloughs can be effective in satisfying the complainant, a prisoner of leave can also mentioned in this article, after appropriate security deposit, in other times and a maximum duration of detention for seven days of leave use. If convicted of a part of the complainant to pay damages or draw her consent, the leave is extended only once for seven days.

1-2-9- issuance of providing criminal

The penal provision is one of the measures that the investigating authorities are obliged to do so. The main purpose of the timely issuance of the accused is necessary and attend to accelerate the process of investigation, trial, and execution is effective on the other hand, in the absence of the accused in the meetings and the verdict of funds in the victim criminal damage from the source of financing will be paid. (Articles 217 to 260 of the Criminal Procedure Code adopted in 2013).

1-2-10- administration also plans private dispute public trial

Article 17 of the Code of Criminal Procedure adopted in 2013, stipulates that: "The verdict of the Criminal Court shall, in respect of losses private claims as evidence of a judgment unless he handle losses requires further investigation. In which case, the court ordered criminal proceedings and then to claim its losses."

Article 20 of the law stipulates: "The fall brought down the private dispute is not public trial. If criminal prosecution is suspended or direction of legal ways leading to the issuance of the prosecution or the acquittal, the criminal court shall, if the private dispute raised in the court proceed to the consideration and decision."

1-2-11- one of the most important cases where the victim has the right to appeal is as following:

1-2-11-1- protest against the appointments Prevention and cessation of prosecution and the victim

Prosecution and the cessation of prosecution and court orders issued by absolutely objectionable, but the prosecution and the cessation of prosecution and court of appeal in cases of Article 427 ref. Act of 2013 is applicable.

1-2-11-2- acquittal and appealed the victim

According to the law, appealed to the court rulings acquitting the accused of the charges alleged, the right victim. The measure in clause 2, Article 427 of the criminal procedure code 2013 is included.

1-2-11-3- objected to the filing case

In this regard, Article 80 of the Code of Criminal Procedure provides: "The offenses were sentenced grade seven and eight, if the complainant does not exist or has passed, in the absence of criminal convictions, judicial officials could be charged after considering the situation social and records of the accused and the circumstances that led to the crime and the defendant, if necessary by obtaining a written commitment to legislation, once the issue prosecute the accused to avoid and the archive the file . "It's within 10 days from the date of notification by the competent court prosecutor and complainant is objectionable.

1-2-11-4- refusal of access to documents case

In this regard, Clause 1 of Article 100 Procedure Code Act 92 provides: "At the request of the complainant if the magistrate read or access to all or some of the securities mentioned case contrary to the need to discover the truth of the know the refusal exports . "

It seems that issued it (the refusal of access) subject to study or access to records requested by complainant and the complainant's first general prosecutor cannot be directly issued from the study or access to records prohibit.

2 The criminal justice process rights of the accused and sentenced in Iran

2.1 rights of the accused at the preliminary inquiry

2-1-1- right to immediate notice of the reasons for arrest

The accused must be informed of the nature of the criminal offense before the start of the investigation so that it can provide the appropriate defenses. The right referred to as the right to charge and must be mentioned in the subpoena as soon as the presence of the accused at the police, who charged him with him.

2-1-2- impermissibility of audit and inspection in the absence of strong suspicion

It must be evident or at least a strong suspicion of a crime or to explore the causes and reasons for crime are in place to audit and inspection by law the right to be created.

The general principle governing the inspection sites under Article 139 ref. Audits and Inspections Act 2013 is that if it is in conflict with the rights of individuals, if permitted that their rights are more important.

2-1-13- In the absence of contraindications called

With regard to the presumption of innocence, judicial officials should summon anyone unless there is sufficient evidence to summon him. In other words, although the only complaint is sufficient to start proceedings but only the application for a summons or arrest suspects without due cause is not enough. Also in crimes at the discretion of judicial authority, social reputation of the accused, morals, or public safety calls for the cause of summons is not mentioned, but the defendant can be summoned to the office to find out the cause of the judicial authority.

2-1-4- principle of the prohibition of arbitrary detention

When the researchers that government officials arbitrarily detained persons, without good reason, correct and legal persons in custody or imprisoned day. In Article 32 of the constitution reads: No one shall be arrested except in accordance with the procedure prescribed by the law ... and in the rest of this Article and Article 39 of the Law for the detainees have been identified. The chase and arrest people they should be based on the law and the legal authority under Iran's constitution prohibit arbitrary arrest and certainly enforce this principle can be found in Article 570 of the fifth book.

The Iranian criminal justice system, the issuance of a temporary detention of Ali al-Qaida is not permitted except in certain crimes and in accordance with the conditions that the legislator has recognized.

2-1-5- observe the insertion of statements accusing trusteeship

Article 199 ref. Provides: answers must be changed, reduced or distorted to be written and then read to the accused to sign or fingerprint reach him. Literate accused himself wrote the answer, unless not the right use.

2.2 The rights of the accused in the judicial process and execution

2.2.1 How to inform the defendant of the contents of the file

The right of access to criminal proceedings through a lawyer accused a fair trial is one of the most important effects. The preliminary investigation leads right to adversarial possible defense procurement provides for the accused and his lawyer.

Code of Criminal Procedure 2013 for the first time to ensure the respect of equality of parties to the dispute, the case study before any investigation by the accused or his lawyer is permitted.

2.2.2 Obtaining the latest defense of the accused

Article 262 ref. Act 2013 provides for: investigator after the end of the investigation and if there is sufficient evidence that a crime, the defendant, or his counsel states that the presumption of innocence or truth of any statement as the last defense to say. When the accused or his counsel at last defense, something said or expressed any evidence that might be useful in uncovering the truth or innocence, the prosecutor is obliged to handle.

Article 263 of ref. Act 2013 provides: If the accused or his counsel to obtain the latest defense summoned and none of them without a reasonable excuse, fails to attend, without getting last-defense, will decide.

2-2-3- right to silence defendant in defense

Article 197 of the Act stipulates "The accused cannot remain silent. In this case, even his refusal to respond or signing statements, in stated. "The article also indicates the guilt or innocence of the legislator is silent on whether or

not, and did not mention his refusal to indicating the preliminary research has been limited.

2.2.4 Right protestation

In general, the verdict may be in person or in absentia. If the verdict is issued in accordance with legal regulations in absentia, the legislator considered the so-called right to absentia to say it protestation.

Article 406 of the Code of Criminal Procedure of 2013: in all crimes, except for crimes that are meant to god, if the defendant or his lawyer is not present in any of the trials are sent or defense, the court after the trial, issued an absentee ballot he does. In this case, if the conviction is based court, within twenty days from the date of notification real, and after the expiry of protestation protestation in the same court rules on the appeal or appeal against deadlines protestation for persons residing outside the Country, two months.

Clause 2 of the same Article states that the default judgment within the deadline of protestation is not it, after the expiration of deadlines protestation and appeal or appeal will be enforced. If the court order is not the actual notification, within twenty days of the date can inform, protestation that in this case, enforcement, stopped and charged with issuing court case to be sent. The court of appeal, where appropriate, to obtain financing or in the provision of the previous action.

2-2-5- right to appeal and appeal

If the default judgment or the judgment of the court protestation not be declared or after the court's verdict at the protestation, the ruling on the objection deadline is certain that the appeal said.

The following points should be mentioned in the revised vote:

First, the decisive criterion for the vote being reviewed or legal penalties, no punishment imposed by the verdict.

Second, implementation or execution of sentence has no effect on the issue, so its suspended sentence may be appealed as well.

Third, if the penalty for an offense in law to determine whether or not either one of them is definitive and can no longer appeal because the punishment is related to a single sentence, therefore the sentence may be appealed.

Fourth, if the parties agree in writing with your right to reconsider or cease their appeal, review or appeal, except for the jurisdiction of the court or the judge issuing them not heard.

Third, if the legal punishment for a crime, the punishment is in line with Article 37 of the Islamic Penal Law be reviewed Adopted in 2013 into a suitable punishment had become certain and punishment is the criterion for the appeal, the punishment of legal regulation.

Ref. accordance with Article 468: "conclusion proceedings in the Supreme Court without summoning the parties or their lawyers are done, unless their presence is necessary branch was reviewing the delay in the proceedings and decision-making not."

As well as ways to appeal under Article 464 of the Code of Criminal Procedure and investigating violations of vote after the Supreme Court under Article 470 of the Act is mentioned.

2-2-6- retrial by the Supreme Court

Is a fantastic way of a judicial review which the Court of parallel court of final judgment by the Supreme Court agreed to consider further action once the deal is finalized? The most important feature is its extraordinary retrial after ruling subject to penalty, has not prevented the request for retrial.

2-2-7- retrial by the Head of the Judiciary

According to Article 477 of the Criminal Procedure Code: "If the head of the judiciary issued any final decision of the judicial authorities to detect illegal, prescribed by a retrial, the Supreme Court sent the case to the particular branches by the head this is allocated for the judiciary to investigate and issue a final decision. Specific branches of the between the declared contrary to law, in violation of previous final decision and review both the form and substance of a judgment they done it. "

2-2-8- postponement of execution

Vote may legally be final and binding but for some reason such as respecting individual interests and social interests of the society and the rule of law as well as the transition the conditions provided by law delayed the execution for a certain period if the amendments aim legislators were provided, execution generally be neutralized. For this purpose, the Code of Criminal Procedure Act of 1392, which is dedicated substances such as Materials 501 to 503.

Conclusion

By examining the rights of the plaintiff and the defendant specified in the Code of Criminal Procedure 1392 is undoubtedly an important legislative steps to uphold the rights and freedoms of the individual and human dignity, especially in the preliminary investigation has taken. These changes have nothing but respect for human rights enshrined in the constitution of Islamic Republic of Iran which, activists' criminal process to the principles of due process and safeguard the rights of the parties are bound. Efforts to preserve the rights of the accused one of the most important aspects of the new law earlier referred to aspects of. But the scale of this issue is beyond the above and more regulations to be discussed. According to the new law means forgetting the rights of the accused is the victim's rights. The law establishes a balance between the rights of the plaintiff and defendant and victim's rights be provided in practice has provided more than before.

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