



Legal Commentary: A Look at Criminal Procedure in Iran

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Summary

In this legal commentary, I detail the structure and phases of criminal investigations and case procedure in the Iranian judicial system, and discuss the attorney's role within each of these stages. My discussion of the different phases of criminal investigations and cases includes a description of the general structure of the Iranian regime, the manner of investigating criminal cases and the formation of political/press related case files. Also, throughout this commentary, I offer my critique of the Iranian Code of Criminal Procedure while outlining the strengths and potential of the Iranian Constitution and other bodies of law.

Preface

A. The right to a “fair trial” is a clear example of an international human rights principle. A political structure can hardly be defined based on human rights and democracy without providing for or guaranteeing this right. A fair trial is a basic undeniable right that can be perceived as a threat by those who hold the levers of power—and who are determined to hold such power violently and absolutely. Without the check of an independent judicial branch and fair trial rights, those who wield absolute power have continuously been able to crush individuality and all its achievements. The horrifying experience of fascism in 20th century Europe clearly exemplified the level to which absolute power can be dangerous, destructive and ruinous to individuality and humanism.

B. The legal structure of every society is both representative of the socioeconomic makeup of the society, as well as the governing political structure. The manner in which criminal trials are carried out and the level of legal rights and privileges afforded to an accused person can correctly define the political governance of a society. Through securing proper standards to insure a fair trial, the governing body is in effect reducing its own overall power, all the while allowing individual and collective freedom seeking efforts to flourish.

C. Without a doubt, the criminal procedure of each country and the rights and privileges provided to the accused, particularly the politically accused, is the most significant factor in measuring the level to which a country is bound to the principles of fair trial. Without a modern and progressive criminal code of procedure that takes into account the rights of the accused, achieving a developed and human oriented judicial system is truly impossible.

D. The Judicial system in Iran is ineffective and suffers many weaknesses. Political considerations play a major role in this system, while it pays no mind to many accepted international principles. In spite of all such short comings, it cannot be denied that this system possesses plenty of legal potential. If strong will and determination exists, this potential can be realized and an effective and fully developed judicial structure can be achieved.

General Concepts

Before we begin defining the important characteristics of the Iranian criminal justice system, I would like to begin by briefly mentioning the various kinds of trials in Iran. According to a simple classification in Iran, there are two types of judicial investigations: legal and criminal. Legal investigations in courts do not revolve around crimes or criminal acts of individuals, but instead around settling civil disputes and matters between citizens with one another or between citizens and governmental organs. In criminal investigations, however, the governing body pursues matters that have been designated as crimes for which punishments have been set.

In accordance with the Islamic Penal Code, any act or failure to act for which a punishment has been designated in the laws is a crime.¹ Also, according to Article 2 of the Code of Criminal Procedure, all crimes have a divine aspect. In other words, the essence of the Islamic Penal structure is designed so that the individual ultimately faces an abstract and non-traditional force.²

Viewed in such a light, the Islamic Republic's officials in effect designate themselves as the executors of divine verdicts and desires to punish all people who commit crimes inside Iran's borders.³ If Iranian citizens act in a way outside of the country that is deemed criminal inside Iran (for example drinking alcoholic beverages and not respecting the Islamic dress code), they can be criminally prosecuted inside of the country's borders.⁴

On the other hand, and as far as the judicial authorities in Iran are concerned, all individuals who have reached the age of maturity designated in *Sharia* law have complete criminal responsibility and in the case of commission of a crime, will be pursued and punished accordingly.⁵ Under *Sharia* law, the age of maturity for boys is 15 lunar years and the age of maturity for girls is 9 lunar years. By this designation, an 8 and half year old (solar years) girl in Iran has the same responsibilities as those of a forty year old woman.

In any case, if a mature person commits what is defined as a crime inside Iran, s/he will be tried based on the principles set forth in the Code of Criminal Procedure of the Islamic Republic of Iran, provided there is no barrier to the issuance of criminal charges.⁶

In general the Criminal Code of Procedure is a collection of laws and principles addressing the discovery of the crime, pursuance of the criminal and the manner of investigation of the case, and issuance of the verdict.⁷ The structure of this law and the degree to which it incorporates human rights principles and standards certainly has a decisive role in providing rights and freedoms to all citizens (especially the accused in political/press related cases). Without a doubt, the accused in the political cases are in special and unique circumstances in this regard. Because

¹ Article 2 of the Islamic Penal Code (1991).

² Article 2 of the Code of Criminal Procedure (1999).

³ Article 3 of the Islamic Penal Code (1991).

⁴ Article 7 of the Islamic Penal Code (1991).

⁵ Note 1 of Article 49 of the Islamic Penal Code (1991).

⁶ According to the law, certain special circumstances will prevent criminal investigation. Two examples are insanity or physical punishment of children by their parents. See Article 49 of the Islamic Penal Code (1991).

⁷ Article 1 of the Code of Criminal Procedure (1999).

they oppose the structures holding absolute power, these accused challenge the power of the judiciary as well—since the judiciary is part and parcel of this absolute rule.

It cannot be denied that the ability of governments to prosecute is an important part of the general power structure of societies in the world. Allowing for fair mechanisms by which an individual can safeguard his or her personal liberties in the face of such broad power is of utmost importance. Without a doubt, one such protective mechanism is the right to legal representation by an individual familiar with the law who can guide an accused in a political case through the complicated process of criminal procedure and who can protect the rights and privileges prescribed by law for all accused.

Preliminary Investigation

Although the process of a criminal trial in Iran can start in three different ways, in effect the accused can benefit from the services of an attorney only after a certain phase. According to the present procedure, Iranian trial attorneys can in no way take part in the crucial beginning phase known as “preliminary investigation.” The participation of a trial attorney is often referred to as “*Mufsidih*” or “corruptor” and is perceived as something that can cause the secrets of the case file to be exposed.⁸

I will describe the “preliminary investigation” phase in the current Iranian criminal trial system before I discuss in detail this shortcoming and unjust limitation in the Iranian judicial system in the following sections.

“Preliminary investigation” is the collection of investigative actions taken for the purpose of discovery of the crime, preserving the evidence of the commission of crime, as well as pursuing the accused from the issuance of the warrant order until his submission to judicial officials.⁹ In Iran, these investigations are done in a framework known as “inquisitorial” that is confidential and in writing.

A “preliminary investigation” usually aims to collect the reasons and documents of the crime, prevent the flight or conspiring of the accused and the issuance of a preliminary judicial opinion on the guilt or innocence of the accused (which is similar to, for example, confirmation of an indictment). As previously noted, this phase of the criminal case is very important. The manner of summoning, interrogation and detaining the accused along with all the decisions that are taken in this phase play a major and decisive role in the fate of a criminal case.

In my personal experience, I am of the belief that over 80 percent of the determinations in a criminal case in Iran take place during the “preliminary investigation” phase. In the case of political/press related cases, the percentage seems even higher. In the political/prisoners of conscience cases, agents of the Ministry of Intelligence prepare a report called “final circulation.” In this report or “circulation,” the manner of formation of the case and selected confessions of the accused are noted while the judge or court magistrate of the case are given the

⁸ See Note 1 of Article 128 of the Code of Criminal Procedure (1999).

⁹ Article 19 of the Code of Criminal Procedure (1999).

options of designated punishments, and even recommendations regarding increasing or decreasing the level of punishment.

It appears that the judges presiding over the political cases in the revolutionary courts are in effect mercenaries whose job is to execute security policies of the regime. Often these judges do not even possess proper knowledge or expertise regarding the content of the case they are presiding over, have not read the case file, and basically do not know much about the accused at all. In these court sessions, which are barely a few minutes long, the judges merely ask simple and formal questions (limited to the name and address of the accused, the charges and such), and do not probe to uncover the truth or social motivations of the accused.

In any case, describing the manner in which the “preliminary investigation” is carried out in Iran and comparing it to the international norms of a fair trial can to an extent highlight the many shortcomings and handicaps of the Iranian judicial system. Presently and after the passage of the “Law to Reinstate the Prosecution Offices”¹⁰ all the sub-phases of the “preliminary investigation” are done during the interrogation sessions and under the supervision of the respective prosecutors.¹¹

Case Investigation

According to current law, the case investigator can only start a “preliminary investigation” for collecting evidence of a crime and issuing a judicial opinion if he is given permission to do so. The conditions under which an investigator can start his investigation have been explained in section “d” of article 3 of the Law of Formation of the General and Revolutionary Courts (amended in 2002).¹²

In Iran, the investigation usually begins with the summoning or detention of the accused. In political cases, individuals are illegally and/or arbitrarily arrested in the streets or their place of work by order of the prosecutor. Or after receiving telephonic and/or written summons, they are sent to special security detention centers such as wards 209 and 350 of Evin prison to be interrogated.

Obviously the nature of an individual’s crime or organizational affiliation plays a major role in the behavior of the interrogation teams and their level of respect for legal standards. In addition, the political atmosphere during which the individual is arrested as well as the knowledge and activity of international human rights organizations with regard to the individual plays a decisive role in the manner political/press related cases are handled in Iran. The more an accused is

¹⁰ In 2002, a law was passed that is known in legal circles as the “Law to Reinstate Prosecution Offices.” Prior to that and in 1994, the Islamic Republic of Iran had passed a new Code of Criminal Procedure and did away with Prosecution offices with the justification that they are Western and non-*Sharia* organs that have no connection to the judicial teaching of the Islamic *Fiqh*.

¹¹ Political/press related, sexual or charges related to minors are exceptions to this rule.

¹² An investigator begins a preliminary investigation when he is legally allowed to do so. The legal provisions for the beginning of the investigation by the investigator are 1) referral by the prosecutor, 2) complaint or announcement of a crime to the investigator when there is no access to the prosecutor and investigating the matter is important, or 3) in evident crimes if the investigator personally witnesses the committing of the crime.

known in the international arena, the softer the behavior of the interrogation team will be towards him. This does not necessarily translate into a shorter detention period or benefit from the services of attorneys during a temporary detention period.

In any case, the principle is that an individual's freedom is considered to be one of their primary rights and detaining citizens is not permissible without clear legal reasons. According to Article 32 of the Iranian Constitution¹³ as well as sections one and two of article 9 of the ICCPR,¹⁴ no one may be detained or arrested unless certain circumstances are present. In case of arrest, the accused has distinct and specific rights that security officers are obliged to observe.¹⁵

Temporary Detention

In May of 2004, a law was passed by the Iranian Parliament that came to be known as the "citizenship law."¹⁶ In this fifteen-article law—that was itself considered one unified article—principles and regulations were set forth that are clearly at odds with the common practices employed in the "preliminary investigation" phase in Iran. These principles and regulations, if implemented, could secure the standards for a fair trial.¹⁷

According to article 5 of this law, "arbitrary detention of individuals" is forbidden. Another important issue addressed in this article is the necessity of providing the family of the detainee with information, a provision that was absent in the Iranian legal system until this point.¹⁸ After the events following the Iranian presidential election of 2009, every day hundreds of family members of those detained and arrested in the street protests went to Evin prison, the Revolutionary Court and/or the Office of Tehran's Prosecutor but were not provided even the

¹³ Article 32 of the Constitution states that: "No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this Article will be liable to punishment in accordance with the law."

¹⁴ Article 9 of the ICCPR states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

¹⁵ Issuing detention orders, official appeals to those orders, written and speedy explanation of the charges, knowledge of the reasons for the charges, and the right to silence are among the rights of the accused when detained and during the "preliminary investigation" phase.

¹⁶ This law was passed on the final days of the sixth Majlis and when the majority of the Iranian Majlis, under the leadership of Mr. Karroubi, was reformist. It was approved by the Guardian Council on May 5 of the same year. This unified Article was originally a circular issued by Mr. Shahroudi, head of the judiciary of the time.

¹⁷ To access the complete text of this law, see "Law of Respecting Legitimate Freedoms and Citizenship Rights", Dadkhahi, available at <http://dadkhahi.blogspot.com/?PostId=218>.

¹⁸ Article 5 of the Law of Respecting Legitimate Freedoms and Citizenship Rights (2004) states: "the principle of ban of arrest and detention of individuals necessitates that when it is compulsory to do so, it should be done based on a warrant and in manner prescribed by law. The case must be given over to relevant judicial authorities within the time prescribe and the family members of the arrestee should be told of the matter."

bare minimum of information about the conditions and whereabouts of their relatives by officials.

In a press interview, the mother of “Sohrab Arabi” one of those killed in the post- 2009 presidential election events said: “from that day on (June 15th protests) my job had become going to the security police, Revolutionary Court and Evin prison daily. There was barely anyone there that didn’t recognize me. The situation continued until July 12. From June 15 to July 12, I searched everywhere in search of my child and did not receive a single proper response.”¹⁹

If the accused is not arrested by the order and demand of a judicial official (for example if s/he was arrested by law enforcement forces during street protests), according to the law, s/he cannot be kept in prison for more than 24 hours without an investigation order being issued.²⁰

Following the 2009 election, thousands of people were arrested in groups and individually in the streets of Tehran and other cities without a detention order being issued for them and kept for days and weeks in temporary detention centers and even prison hallways without having their charges clearly explained.²¹

A temporary detention order is supposed to be issued in only specific and limited cases. Articles 35 and 132 of the Iranian Criminal Code of Procedure clearly indicate that temporary detention may be issued for the gravest crimes such as murder and kidnapping and spilling acid on someone ... or judicial authorities must be certain (with attention to the criminal and personal background of the person) that if not arrested, the accused would attempt to flee.²² Taking away the freedom of and detaining an individual is an important matter. On the other hand, we must remember that legally, a person who is accused is still in a condition where his or

¹⁹ The full text of this interview in Persian may be found at “I will never forget the Pain of the last day—Interview with Sohrab Arabi’s Mother,” Persian team, 17 July 1388, available at <http://persianteam.ir/forum/showthread.php?t=15390>.

²⁰ Article 32 of the Constitution and Article 123 of the Criminal Code of Procedure.

²¹ For example, Mahboubeh Karami, a women’s rights activist was detained in March 2010 and kept in prison for week without a formal charge being presented to her. See “Continuing the Detention of Mahboubeh Karami without a Charge,” Change for Equality, March 18, 2010, available at <http://www.1millioncampaign.info/spip.php?Article5603>.

²² Article 132 of the Criminal Code of Procedure states: “in order to have access to the accused and ensure his prompt presence, and when necessary prevent his flight or hiding or conspiring with another, the judge is duty bound to, after explaining the charges to the accused, issue one of the securing orders that follow:

- 1) obligating to be present by promising on one’s honor
- 2) Obligation to be present by deciding an obliging amount effective until the completion of trial and execution of the sentence and in case of refusal, changing it to a sponsoring amount
- 3) Receiving a sponsor or sponsoring amount
- 4) Receiving bail that can include cash or bank promissory note or a movable or immovable property
- 5) Temporary detention with accordance to the conditions prescribed in this law

Note – the judge is duty bound to, while issuing an order of accepting the sponsorship or bail, explain to the person posting the bail or the sponsor (if it is not the accused) that if the accused is summoned and does not appear without an acceptable excuse or without the sponsor or person leaving the bail introducing him to the court, the sponsoring amount or bail will be received and / or confiscated in accordance to the regulations put forth in this law.”

her crime has not been proven and so, until the end of the legal proceedings, s/he must be considered innocent.

The standards of a fair trial always require that the accused be considered innocent until proven guilty. Unfortunately, my personal experience as a trial attorney in Iran has shown that judicial and administrative officials in the Islamic Republic treat the accused as a criminal from inception. The conditions of detention and interrogation, the tone of voice used by interrogators in questioning, the behavior of the administrative officers of the detention centers and prosecutor's offices in respect to the accused—these all reflect this wrong and illegal view point.

Even if the accused is detained, his or her arrest has to be conducted in accordance with the law, during the day time and accompanied by an official arrest warrant. Night attacks on homes by security officers, detention of people in the night, and searches of their homes and belongings during the hours when people are normally sleeping are not necessary.²³ Mahboubeh Karami, Mansoureh Shojaee, Hesam Firouzi, Ja'far Panahi, Abolfazl Abedini, Navid Khanjani, Akbar Montaji and dozens of other social and human rights activists who were arrested in the unrest following last year's presidential election in Iran, were apprehended by security officers who raided their homes in the middle of the night.²⁴

On the other hand, it appears that the manner and length of temporary detention of individuals within the framework of the Iranian judicial system (particularly in political/press related cases) is more a mechanism intended to pressure the prisoner and break his spirit than a legal action intended to prevent the flight of the accused. According to section "I" of article 3 of the law of the Formation of the Public and Revolutionary Courts (amended 2002), a person cannot be held in temporary detention for more than two months based on the majority of charges and four months for very specific charges.

In political/press related charges, the investigator on the case has the authority to keep the accused in the detention center of the Ministry of Intelligence for up to four months.²⁵ After this time has passed, and if the individual remains in prison, his or her detention will constitute an illegal detention and carries a designated punishment unless the legal authority (the security

²³ Article 121 of the Criminal Code of Procedure states: "Arresting the accused, other than in immediate cases must be done in day time." Article 100 of the same law states: "search of houses will be done in day time and only done at night when need necessitates it. The reason for this necessity must be mentioned in the order by the judge."

²⁴ For more examples and information, see *Ittila'iyyih dar Khusus-i Bazdasht-i Gustardihyih Fa'lan-i Huquq-i Bashar* [Announcement Regarding Widespread Detention of Human Rights Activists], Kalameh, March 4, 2010, available at <http://www.kaleme.com/1388/12/13/klm-13128>; *24 Tan az Fa'lan-i Junbish-i Zanan, Zanan-I Ruznamih Nigar va Fa'lan-i Madani tay-ih Havadis-i pas az Intikhabat Bazdasht Shudand / 5 Nafar Azad Shudand* [24 of the Women Movement Activists, Female Journalists and Civil Activists Were Arrested in the Post Election Unrest / 5 Were Released], Feminist School, 31 December 2009, available at <http://www.iranfemschool.com/spip.php?Article4000>; *Dadsitan-i Tehran: Bazdasht-i Ja'far Panahi Janbihyih Siyasi Nadarad* [Prosecutor of Tehran: Detention of Ja'far Panahi is not Politically Motivated], RadioFarda, March 2, 2010, available at http://www.radiofarda.com/content/f2_Iran_postelection_Jafar_Panahi_family_detained_Intelligence/1972028.html

²⁵ This is only when a "political crime" is finally defined in Iran and the political/press-related charges are investigated in the criminal court of the province and in the presence of a jury, as designated under Note 1 of Article 20 of the Law of the Formation of Public and revolutionary Courts as well as Article 168 of the Constitution.

investigator on the case) extends the detention period.²⁶ Since the Iranian judicial system is not independent and properly functioning, investigators of the security branches often approve the requests from local intelligence offices to extend the detention of political/press related accused.²⁷ When the temporary detention order is extended, the individual can—according to the Law of the Formation of Public and Revolutionary Courts—appeal it within 10 days. Unfortunately however, due to prisoners’ lack of knowledge of this provision, an individual’s exercise of this legal right has seldom occurred.

Pressures during Detention

Long stretches of detention in solitary cells, lack of access to hygienic services, use of blindfolds, inappropriate behavior of interrogation teams and even simple administrative employees, uncertainty and stalling in investigations, complete news bans (or alternatively, the transfer of misinformation and troubling news), bans on fresh air, and refusal to allow phone conversations and visitation with families are all indeed clear and evident examples of psychological torture in Iranian prisons.

According to basic legal principles, confessions and statements of an accused given under torture and physical and psychological pressure cannot be relied upon. Based on human rights principles, any manner of torturing the accused or exhibiting insulting behavior towards him or her is forbidden.²⁸ Article 38 of the Constitution of the Islamic Republic of Iran clearly bans torture and considers confessions stemming from torture to hold no legal value and credit.²⁹ Article 9 of the Law of Respecting Legitimate Freedoms and Citizenship Rights prescribed similar regulations in this regard.³⁰

Ali Kantoori was one of the detainees arrested during the violent wave of arrest of leftist activists in the winter of 2007. I represented him in the criminal charges he faced in the city of Sanandaj. Ali had spent five months in Evin prison in Tehran and was put under heavy pressure by the interrogation team on multiple occasions to accept the charges against him. When he was released from prison he had obviously lost weight and was suffering from a severe respiratory condition. During his detention he had no access to proper health services and his attorneys were not able to visit him.

²⁶ Article 570 of the Islamic Penal Code (1991) states: “Any of the officials and agents of governmental organs and apparatus that, against the law, take away freedom of any individual or prevent them from enjoying the rights afforded to them in the Constitution of the Islamic Republic of Iran will, in addition to discharge from service and probation from one to five year from governmental jobs, be sentenced from 2 months to 3 years’ imprisonment.”

²⁷ In most political cases of the revolutionary court, one can see the letter of request to extend the detention sent by the Ministry of Intelligence that has been sent every two month with the excuse of “lack of completion of investigation” to request that the accused be kept in the control of the agents of the Ministry of Intelligence.

²⁸ For example Article 5 of the Universal Declaration of Human Rights (1948) and Article 7 of the ICCPR (1966) and most importantly Article 1 of the Convention Against Torture (1984) all state similar sentiments.

²⁹ Article 37 of the Constitution of the Islamic Republic of Iran states: “Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.”

³⁰ Article 9 of the Law of Respecting Legitimate Freedoms and Citizenship Rights (2004) states: “Subjecting the accused to any form of torture for the purpose of extracting information or forcing him into other deeds is forbidden and confessions extracted in such manner have no legal or *Sharia* authority.”

Without a doubt one of the most important principles that ensure a fair trial is the right to legal representation and the services of an attorney throughout the trial. From the moment of his/her summons or detention until the finalization of the court's verdict and even during the execution of the verdict, the accused must have access to the services of trial attorneys and legal counsel.

Right of the Accused to Defense and Representation in Political Cases

Article 3 of the "Citizenship Rights Law" (2004) clearly required courts and prosecution offices to respect the right of the accused to a defense and to provide the accused with the services of a defense attorney.³¹ Article 35 of the Constitution also recognizes the "right to elect an attorney" in all courts and clearly requires the courts to provide opportunities for the realization of this right.³² Similar protections have been prescribed in the Islamic Penal Code.³³ This right is so important that without the presence of defense attorneys, a court hearing session lacks the legitimacy to convene. Based on this, the courts are obliged to assign a public defender for persons who lack the financial means to retain a lawyer on their own.³⁴

I previously mentioned that the perception of most investigators (especially those working on political/press related cases) is that the presence of trial attorneys in the "preliminary investigation" phase can cause corruption and expose the secrets of the case. Unfortunately, the note of Article 128 of the Code of Criminal Procedure (1999) gives the investigator the ability to block the presence of trial attorneys during interrogations.³⁵ It appears that the application of this article extends beyond just the physical presence of the attorneys. In the preliminary investigation phase, some investigators use the note under Article 128 of the Code of Criminal Procedure to refuse to accept a retainer letter from an attorney.³⁶

In such a situation, not only are trial attorneys rendered unable to accompany their clients through the most important part of the criminal investigation of their case, but also they are not able to read the case and prepare motions and defenses on their behalf. Although the previous Code of Criminal Procedure of Iran (which was effective from 1911 to September of 1999) did

³¹ Courts and prosecution offices are required to respect the right of the accused and the plaintiff and provide them with the opportunity to retain an attorney.

³² Article 35 of the Iranian Constitution states: "Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel."

³³ See, for example, Article 185 of this law that states: "in all criminal cases the two sides can introduce their defense attorney or attorneys. The time for the hearing will be handed out to the accused, complainant, private complainant and their defense attorneys. In case of multiple attorneys, the presence of one of the attorneys from each side is enough for the court to convene and hearing to be under way."

³⁴ Article 186 of the Code of Criminal Procedure (1999) prescribes that: "The accused can request from the court to retain an attorney for him. If the court decides that the accused lacks the means to select an attorney, the court will appoint an attorney for him from among the attorneys in that judicial district and if not possible one will be sent from the nearest judicial district. If the appointed attorney requests payment the court will decide on the amount of payment with respect to the amount of work done which is not to exceed the legal limits. The payment will be paid from the appropriate line item of Judiciary's budget."

³⁵ Note to Article 128 of the Criminal Code of Procedure states: "In cases when the subject has a confidential nature, or if the presence of anyone other than the accused can cause corruption, and also in the case of crimes against national security, presence of attorney in the investigation phase will be with court permission only."

³⁶ In Iran, the retainer letter will be registered inside the legal or criminal case file only by order of a judicial authority.

not allow the trial attorneys to participate in the preliminary investigation phase, at least it forbade the stripping of their rights to be present, supervise and give legal advice.³⁷ During the investigation of the case of Mr. Kantoori, my colleagues and I were only able to access the content of the case file after the investigations and interrogations were completed. During his few months in detention, our client was not even given the basic legal right of a visit with his attorney. Like other political/press related cases, this case had different instances of illegality—including the manner of the arrest of the accused, the length of his detention, and questioning about personal matters unrelated to the charges.

Certainly the knowledge of the accused of his or her legal rights can play a decisive role in the process of “preliminary investigation.” For example, the knowledge that the accused has the right to remain silent and to not answer any of the questions of the interrogator or case investigator (whether legal, illegal and/or outside of the subject of charges) is even prescribed under the Iranian Code of Criminal Procedure.³⁸ Knowledge of such a right can make an obvious difference in “preliminary investigations.”

Only the attorneys or legal counsel can, along with accompanying the accused, remind him/her of his/her rights as an accused and as a client, wherever possible. Certainly preventing the presence and participation of attorneys in the “preliminary investigation” phase can only take away from the rights of the accused. Due to lack of access to an attorney, Mr. Kantoori and the other accused in his case did not avail themselves of rights and privileges that could have changed the course of their cases. Naturally, laypersons cannot be expected to be aware of all their legal rights. It is the attorney who can participate in the primary investigation and interrogations to ensure that the law is correctly executed and report abuses of the judiciary.

The truth is that, since the early years of the Islamic Government, judicial officials have not had a positive view of attorneys. Some of these judicial officials consider the attorneys to be obtrusive outsiders who get in the way of their freedom in approach and lawlessness. In the last few months, dozens of attorneys have been threatened, arrested and forced to flee the country under political pressure. The Iranian Bar Association—which by law is an independent organization that is paid for by private funds of the attorneys inside Iran—has lost much of its independence due to constant political pressures and has practically been silenced in the face of the widespread and systematic crushing of human rights attorneys inside Iran. It appears that Iranian officials intend to pass new laws to take away the semi-independence that is left for the Iranian Bar Association. For example, the passage of Article 187 of the law of the Third

³⁷ Note to Article 112 of the former Code of Criminal Procedure (1911) prescribed that: “The accused can have an official court attorney with him. Without disturbing the process of investigation and at the completion of the investigation, the attorney can inform the investigator of matters that would uncover the truth and defend the accused or those that would properly execute the law. His statement will be reflected in the final report.”

³⁸ A section of Article 129 of the Code of Criminal Procedure (1999) says: “then the charge and its reasons will be explained clearly to the accused. After that, the investigation begins. The question must be clear and useful. Leading questions, confusing or coercing and forcing the accused is forbidden. If the accused refuses to respond to the question it will be noted in the final report.” Of course the investigators have no duty to remind the accused of such rights.

Program for Development prescribes that although their period ended, it continues to remain as a competing governmental body in the face of a semi-independent Bar Association.³⁹

In Iranian political cases, the judicial authorities clearly consider the trial attorney to be identical in thought and mind to the accused and consider him to be a threat to the security of the country and/or an anti-revolutionary.⁴⁰ A famous video interview with Seyyed Assadollah Lajevardi, former prosecutor of Tehran (in the early 1980s) and former head of Evin Prison, is available on the internet that clearly reflects this perception which is not based in legal principles.⁴¹ This non-legal mindset and the days of widespread crushing of political groups and violent clashes with dissident groups are not limited to the early years of the Islamic Republic.⁴² In July 2010, Imami Kashani, temporary Friday prayer Imam, spoke directly to trial attorneys and said that “when they read and inspect a case file if they realize that the client is not in the right based on what is in the case file, then they should not defend him.”⁴³ This reflects the degree to which some political officials in Iran lack understanding of core legal principles—and how far removed they are from understanding the profession of lawyers.

I recall that during the defense of Mr. Habibi, who is another political activist forced to flee the country after a prison sentence was issued to him, the infamous judge of branch 28 of the revolutionary court insulted me and treated me very disrespectfully and accused me of being aligned with my client and insisted that I refuse to represent Mr. Habibi.⁴⁴

In any case, as I mentioned previously, only after the end of interrogation and the completion of the “preliminary investigation” phase and the handing over of the case file to the court can the attorney register his retainer letter in the file. At this stage, the accused is either temporarily released on bail or continues to remain in the detention ward, due to inability to pay a heavy bail.

If the accused continues to remain in prison, an attorney has to first obtain permission from the judge in order to visit his client. Since the possibility of judicial action against social and political activists in Iran always exists, many social activists sign a retainer letter and retain one of the attorneys who usually defend political cases so that in case of their arrest, the court’s permission will not be necessary for them to visit with their attorney. This method also has another major use because the attorney can give information about his client or, depending on his defense strategy, give interviews to the media.

³⁹ Article 178 of the Third Program for Development (2000) states that: “in order to provide necessary legal protection and ease access of people to judicial services and protection of the right of the masses, the judiciary is allowed to assess the competence of graduates of law programs in order to issue them license to open institutions to offer legal counsel.”

⁴⁰ In the official language of the Islamic Republic, opposition and critics of the regime are often deemed to be anti-revolutionaries.

⁴¹ Video File: Lajevardi Adamkosh, available at <http://www.youtube.com/watch?v=Vnon-spne7w>.

⁴² In the early 1980s a sign on the entrance to many courts in Iran stated “we do not allow trial attorneys inside.”

⁴³ *Imam Jum’iyih Tehran: Vukala az Kasani kih Zihag Nistand Difa’ Nakunand* [Friday Prayer Imam of Tehran: Attorneys must not represent people who are guilty], July 2, 2010, RadioZamaneh, available at http://zamaaneh.com/news/2010/07/post_13640.html

⁴⁴ Judge Mohammad Moghiseh (current head of branch 28 of the revolutionary court who during the 1980s was known by the pseudonym “Naserian”).

In many instances, taking advantage of free international media is the only way to save clients inside Iran. A good example of this is the case of Sakineh Mohammadi Ashtiani. In part, due to the timely and wise actions of her attorney Mohammad Mostafaei, Mohammadi Ashtiani's stoning sentence has not yet been carried out.

As explained, after the preliminary investigation phase the attorneys register their letters of retainer in the respective criminal case files. If the accused has retained an attorney, a court date will be given to the attorney and s/he can visit the relevant branch before the date of the court session and begin preparing the defense of his/her client.

In political/press related cases, attorneys are not permitted to copy or photograph documents or papers that are in the case file. Therefore, in order to fully study the case, the attorneys must make multiple visits to the court. Considering the atmosphere of the courts, this is not a simple task.⁴⁵

The Investigative Session of the Court

In the investigative session, the first issue addressed is the competence of the court. Judicial competence is the legal term addressing the ability or jurisdictional legal requirement of the investigating body. This means that all cases are tried in a specific court depending on the nature of the accusation, the location of the commission of the alleged crime, and the characteristics of the accused. For example, according to Article 168 of the Iranian constitution, political crimes must be tried in an "open" and "public court" in the presence of a "jury."⁴⁶

The Law of Formation of the Public and Revolutionary Courts (amended 2002) prescribes similar laws in article 20 and states that political/press related crimes of individuals must be investigated in the presence of a jury and three judges of the "Provincial Criminal Court."⁴⁷ Although the article does not note the need for these trials to be held openly, Articles 165⁴⁸ and 168 of the Constitution state that open trials, especially in political/press related offenses, is an obvious legal right.⁴⁹

⁴⁵ Aside from the fact that many political cases are discussed in provincial courts, access to the revolutionary court and meeting judicial officials in those courts is a difficult task. For example in Tehran, after entering the Revolutionary Courts building that is under heavy security and requires bodily searches, the relevant branch is contacted through the administrative officers and if permission is received, attorneys are given a sheet to enter the court and study the case file.

⁴⁶ Article 168 of the Iranian Constitution prescribes: "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."

⁴⁷ Parts of Article 20 of the Law of Formation of the Public and Revolutionary Courts (amended 1381) states: "For investigating crimes the legal punishment for which are bodily retribution or political and press related crimes ... Provincial Criminal Court ... will establish with three members (head of court and two councils or replaceable magistrates of the appeal court) ... in investigating political and press related crimes, the Provincial Criminal Court will convene in the presence of a jury."

⁴⁸ Article 165 of the Iranian Constitution prescribes that: "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."

Over 31 years have passed since the passage of the current constitution (1979) but the Islamic Republic's judicial authorities use the absence of a definition for "political crime" as an excuse to refuse observance of the rights and privileges enshrined in the Iranian body of law for the accused in political cases. Thirty-two years after the 1979 revolution, in the official language of the Islamic Republic, those accused in the political cases are still called "anti-revolutionaries" and their respective cases are processed in "revolutionary courts." In those courts there are no juries and the media is not usually permitted to be present. There is only one judge dealing with each case and the appeal courts dealing with the cases are also set.⁵⁰ Attorneys can only access these branches with difficulty and the courts usually have special security protection.

Until the early years of the 1990s, defense attorneys were not present in political cases or other cases presented in the revolutionary courts. Abdolfattah Soltani, an experienced Iranian attorney, has commented that the presence of attorneys in cases processed in the revolutionary court only became possible after the onset of the reform era in the latter years of the 1990s.⁵¹

Either way, despite the clear statement of the Constitution and other bodies of law in Iran to the contrary,⁵² and according to Article 5 of the Law of Formation of Public and Revolutionary courts,⁵³ political prisoners are tried in a special court called a "revolutionary court" in the absence of a jury, and in most cases, in a closed court. As previously mentioned, the sessions in these courts are only a few minutes long, and aside from asking simple questions that are largely formalities (such as name, personal identification, statement of the charges, and questions about whether the accused will present a defense), the heads of the courts do not make any attempts to uncover the social intentions of the accused or hear the details of the interactions during the detention period.

According to the law, at the beginning of a court hearing, the representative of the prosecutor must read the indictment of the accused and defend its content. But, unless the defense attorney protests his absence, it is seldom seen that a court convenes in the presence of the representative of the prosecutor. In political/press related cases, a representative of the prosecutor is usually an intelligence employee of the revolutionary prosecution office who may have played a role in the interrogation of the accused during the preliminary investigation.

⁴⁹ The need for trials to be held openly is noted in a few other laws, most notably Article 188 of the Criminal Code of Procedure (1999).

⁵⁰ For example the branches 36 and 54 of the Court of Appeal of Tehran Province usually deal with political / press related cases. These two branches are located inside the revolutionary court building in Tehran.

⁵¹ *Abdolfattah Soltani dar Nishast-i Guruh-i Parsiyan Chih Guft* [What Abdolfattah Soltani said in the Meeting with Parsian Group], Vakil-ul Rroaya, 10 December 2009, available at <http://www.vakilroaya.com/post-598.aspx>.

⁵² See for example Article 20 of the Law of Formation of Public and Revolutionary Courts (amended 2002).

⁵³ Article 5 of the Law of Formation of Public and Revolutionary Courts prescribes: "revolutionary courts will be formed in needed numbers in the capitals of each province, as deemed necessary by the head of the judiciary, under the supervision and leadership of the judicial branches, to investigate the following crime: 1- all the crimes against national and foreign security, *muharibih* and corruption on earth; 2- insulting the founder of the Islamic Republic and the esteemed leader; 3- conspiring against the Islamic Republic of Iran with arms and assassination and destruction of centers with the intention of opposition with the regime; 4- spying to benefit foreigners; 5-all crimes relating to smuggling and narcotics.

In principle, in a court hearing, attorneys can defend their clients both verbally and in writing. In practice, however, and particularly in political/press related cases, the judges do not permit the attorneys to present a verbal defense. At the end of the session, the report is signed by the accused and his attorney and according to the law, the judge is duty bound to issue his verdict within a week's time.⁵⁴

Court Verdict and Issuance of the Judgment

Although the law states that judges must issue their verdicts within a week's time, it seldom occurs that a court decision is handed down within a week of completion of trial. In political/press related cases, suspending the investigation or keeping individuals in a state of uncertainty is a matter of security in the hands of the administration. Aside from inflicting serious mental anguish on the politically accused, this illegal policy pits the individual against the regime in a defensive and passive position, and deprives the individual of the ability to take any decisive action during this period.

In any case, a verdict from the court must be well-founded and documented. This means that in issuing his opinion, the judge must mention both the basis of his reasoning as well as the legal scripture and articles on which his sentence is based. Article 166 of the Constitution, as well as Article 9 of the Law of Formation of the Public and Revolutionary Court, prescribe similar regulations in this regard.⁵⁵

A court verdict must be officially handed down to the accused and/or his attorneys. The handing down of the verdict is an important matter and not just a formality. Not only is a court verdict considered to be an official document of the country holding special validity, but the date that the verdict is issued is of significant importance as it declares the beginning of the limited period for appealing the verdict.

In political/press related cases, a verdict is normally not handed down. The authorities of the Islamic Republic fear publication of their anti-human rights verdicts and will not allow the accused or his attorney to retain a copy of the court verdict. In cases where I represented clients in the revolutionary court, aside from one or two examples, I was never able to obtain a copy of the court opinion or decision. There are hundreds of political prisoners in Iran who are never able to obtain a document indicting their sentence or period of imprisonment. On the other hand, all the decisions of the courts can be appealed and the possibility of these appeals and the method of using this right are stated in the text of the verdict.

⁵⁴ Article 17 of the Law of Formation of Public and Revolutionary Courts states: "The trial judge shall issue a decision within a week of completion of trial."

⁵⁵ Article 166 of the Iranian Constitution states: "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 9 of the Law of Formation of the Public and Revolutionary Courts prescribes that: "warrants and decisions of the court must be well founded and documented by the law or *Sharia* or principles based on which the verdict has been issued. Transgression from this matter and issuing a verdict without documenting it will cause disciplinary sentences."

Appealing Decisions

According to a known legal principle, appellate courts may not increase the initial sentence issued by the court of first instance or change it in a manner that is to the detriment of the accused. The intention of the accused in requesting an appeal of his sentence stems from his belief that the initial sentence is unnecessarily high. Unfortunately this legal principle is often not adhered to in the framework of the Iranian criminal system. With respect to certain punishments in the Iranian criminal system, the possibility always exists that by appealing the sentence the initial sentence will be increased on review.

Iran's criminal justice system defines itself based on the principles of *Shi'a* jurisprudence. Article 4 of the Constitution of the Islamic Republic of Iran⁵⁶ emphasizes that all the laws of the country must be extracted from the standards of *Shi'a* jurisprudence. With this description, if the court of first instance issues a verdict that is not in accordance with the teachings of Sharia law, the possibility exists that, in the case of an appeal from the sentence, a harsher punishment may be issued by the appeal court. For example, if two homosexual women have a relationship that, in the opinion of the court of first instance, did not qualify for the designated punishment of "*musahiqih* (lesbianism),"⁵⁷ they will each receive less than 100 lashes, as prescribed by law. However, if one of the two women appeals this sentence, the possibility exists that the appellate court will determine that the action warrants the designated punishment for "*musahiqih*."⁵⁸

In Iran, appellate courts generally do not convene and issue their decisions without summoning the accused to a hearing. As previously mentioned, in political cases there are only certain branches of the appeal courts that investigate their appeals. For example in Tehran, appeal decisions for political/press related crimes are usually processed in branches 36 and 54 of the appeal court of Tehran province in an especially secure atmosphere.

Conclusion

The government of Iran has signed many international conventions and treaties, from the United Nations Charter to the famous 1966 conventions of the General Assembly and the protocols of the International Labor Organization. According to Article 9 of the Iranian Civil Code, the content of the international covenants that Iran is a signatory to must be implemented as domestic law.⁵⁹

⁵⁶ Article 4 of the Iranian constitution (1979) states: "All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all Articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter."

⁵⁷ Article 134 of the Islamic penal code (1991) states: "If two women not related by consanguinity are naked under one cover without necessity, they will be punished to less than hundred (100) lashes (Ta'azir). In case of its repetition as well as the repetition of punishment, hundred (100) lashes will be hit the third time."

⁵⁸ Article 127 of the Islamic Penal Code states: "*Musahiqih* is an homosexual act of women involving the genitalia." Article 129 of the same law states: "Prescribed punishment (hadd) for *musahiqih* for each of the actors is 100 lashes."

⁵⁹ Article 9 of the Iranian Civil Code says: "terms and regulation in the covenants that have been agreed upon between Iran other countries with accordance of the constitution are considered laws."

Aside from the Iranian government's international obligations, the Iranian body of laws—despite all its inherent shortcomings and inefficiencies—has significant potential at times. Such potential provides trial attorneys and other social activists inside the country with the ability to challenge illegal procedures employed by the judicial authorities of the Islamic Republic as well as to demand respect for the laws written and passed by none other than the same authorities.

Standardization of the laws and efforts to comply with international norms is indeed a collective demand for the realization of justice. This demand must continue forever and be pursued by legal experts. However, given the present circumstances in Iran, it appears that the absence of progressive politics continues to be the primary reason for the Iranian judicial system's many maladies. Based on this, it can hardly be surmised that a reform of Iran's legal system can be achieved without radical reform in the political structure of Iran.

Sources:

Ashuri, Mohammad, *Criminal Code of Procedure, Tehran*, Semat, 1383 (2004) 8th edition.
Amir Arjomand, Ardeshir, *Complete collection of international human rights documents*, Tehran, publications and dissemination center of Shaid Beheshti.
Constitution of the Islamic Republic of Iran (1979).
Code of Criminal Procedure (1999).
Islamic Penal Code (2001).