

## **Developments in Law of Criminal Procedure act 92 of Accused's Defense Rights**

**Reza Khatiri<sup>1,2</sup>, Ali Talezari\*<sup>2</sup>**

<sup>1</sup>Department of Law, Golestan Science and Research Branch, Islamic Azad University, Gorgan, Iran

<sup>2\*</sup>Department of law, Gorgan Branch, Islamic Azad University, Gorgan, Iran

**Received:** 12 March 2015, **Accepted:** 15 April 2015, **Available online:** 15 May 2015

---

### **Abstract**

One of the crucial steps in general case is the preliminary investigation stage. This step is important because in time usually a lot of time has not passed from the date of the crime to research and the causes and effects of crime have gone, potential witnesses still remember his observations, and it is likely that the defendant has not get escaped punishment or to get rid of the partners and their deputies are not a conspiracy. Therefore, the research that takes place at this time has great impact on the preservation and collection of evidence and filling complete and it is ready for shipment in court, the importance of timely and quick reference for this research is undeniable. But at this stage the accused has rights such as the right to counsel... so it should be said that one of the guiding principles in A.D.K. is to protect the rights of people accused of supporting the rights of the defense in which he has a special place. The accused who is one of the parties of criminal defense requires the use of tools to remove the label of the evidence and documents with other parties, the prosecutor and the plaintiffs claim. These rights must be developed in a way that has maximum protection from the accused. In this research we have tried to explain this law.

## **Introduction**

Articles 570 and 230 of the new code of criminal procedure amendment act of meeting dated 23/02/2014 commission on judicial and legal parliament according to article eighty-fifth constitutions with a bill was submitted to parliament, after agreeing with the trial run for three years at a public meeting dated 08/02/2012 and confirmed by the guardian council, dated 17/03/2014, on 23 / 04/2014 has been published in the official newspaper No. 2013,5 (1) and the article 569, after six months from the date of publication in the official newspaper is indispensable.

Section I: A change in the definition of the code of criminal procedure and its governing principles:

The first change in the new law should be defined in Article 1 of this law. Accordingly, "the criminal procedure code, is a set of regulations which is ordained for the detection of crime, prosecution of the accused, a preliminary investigation, mediation, peace between the parties, handling, decision, one way or protest votes, determining the duties and powers of judicial and judicial restraining and the rights of the accused, the victim and the situation. " Meanwhile, "the preliminary investigation, the prosecution of the accused, a preliminary investigation, mediation, peace between the parties," had been one of those amendments and additions to come in article 1 of the former code of criminal procedure had been completed in the new law.

Legislators looking at the new law was not based on the term "criminal negligence or culpability of the accused" and in this definition, unlike the former law that has been reminisced from the "criminal prosecution", reminisces the term "the prosecution of the accused" and it comes in correct position and the anticipated mechanisms for the peaceful settlement of claims and disputes as "mediation and peace between the parties", try to reduce criminal cases and the appropriate statistical adjustment and compliance with dignity and the citizens and the parties shall be called upon peaceful conduct and the role and duty of the judicial authority and the court emphasized in this connection. However, the allocation and assignment of peace and mediation investigator does not mean much in a criminal case. In addition, by law, the courts of general jurisdiction against the formation of public and revolutionary courts, adopted July 4, 1994 by subsequent amendments, modified and transformed into the future. (Ashouri, Mohammad, 32)

Section II: the rights of the parties to the case and the need to respect the fundamental rights of equality, human and citizens: Furthermore, to the article 2 of the law, "the law of criminal procedure should be documented, guarantee the rights of litigants and its rules are applied equally than those under the same conditions as a result of similar crimes prosecuted. " Rule of law, equality of the parties and insurance of a fair trial are the primary condition for achieving the look of the new law. The condition of the obligation laid down in article 3 of this act is completed. (Khaleqi, Ali, 11)

Accordingly, "the judiciary should decide and investigate with full impartiality and independency to the charge alleged to persons in the shortest time possible and prevent and from any act that disturbs or prolong the criminal justice process "therefore, the principle of" judicial independence and impartiality of the judiciary, and elimination of the jurisdiction "is in the criminal investigation process. Our goal will not be achieved unless the accused guilty on the basis of the centrality of "presumption of innocence". (Mohammad Reza Zamani Darmazari, 30)

At the same connection, article 4 of the act provides "the principle is the presumption of innocence. Any restrictive measures, depriving people of freedom and privacy in compliance with the law and is authorized and supervised by the judicial authority and in any case, these measures should be applied in such a way that the integrity and dignity of persons hurt. "The primacy of the presumption of innocence in criminal justice process, protect and guarantee individual rights and human dignity and privacy of people are one of those principles governing the attention of legislators in Q.A.D.K. in this new relationship. (Ashouri, Mohammad, 39)

Section III: The right to defend the rights of the accused

To defend the rights of the accused: to article 5 new Q.A.D.K; "The defendant must be benefitted as soon as possible from the subject of the alleged charges and the right to defense counsel and other rights under the law." Article 6 of the act provides: "The defendant, victim, witness or other person concerned must be informed of his right to judicial process and provide mechanisms to respect and guarantee these rights." Also, in accordance with article 7 of the said act; "At all stages of the criminal procedure, civil rights set forth in the" act respecting the legitimate freedoms and rights of citizens ", adopted on 04/05/2004 by all judicial authorities, restraining the judiciary and other persons involved in the procedure are required. Offenders, in addition to compensation, the penalties prescribed in article 570 of the penal code (dissuasive sanctions and penalties

adopted on 24 / 06/1996) will be charged, unless the other rules prescribed punishment is more severe. " Section IV: The right of advocacy in the criminal justice process Requires knowledge of the accused of their fundamental rights and citizenship: to articles 5 and 6 new Q.A.D.K.; "The defendant must be

benefitted as soon as possible from the subject of the alleged charges and the right to defense counsel and other rights under the law. The Accused, victim, witness or other person concerned must be informed of his right to judicial process and provide mechanisms to respect and ensure the rights and in this connection, citizenship rights set forth in the "act respecting the legitimate freedoms and rights of citizens", adopted on 04/05/2004 by all judicial authorities, restraining the judiciary and other persons involved in the procedure is mandatory" and non-compliance with the law and penal responsibility is punishable. (Qaleqi, Ali, 37)

### **1. The right to attend and meet with the defendant's lawyer:**

According to article 48 thereof; "with the start of observation, the defendant can request an attorney. The lawyer must meet with the person under consideration and with respect of the confidentiality of investigations and discussions and at the end of a meeting with the defendant, a lawyer can provide your written submissions for inclusion in the present case which it should not be more than one hour with ." However, the amendment of the article; "If a person is accused of committing one of the organized crime and offenses against internal or external security, theft, drugs and psychotropic or paragraphs (a) offenses (crimes punishable by deprivation leads to life), (b) (crimes cause a life sentence) and (c) ( intentional crimes and crimes against physical integrity, the punishment of amputation of one-third or more of their total compensation) of Article 302 of this law is under consideration, until a week after the observation, may not have a lawyer. " The prohibition and restriction of political and criminal offenses punishable by imprisonment of four and above caused the unforeseen are prohibited. The prescription given above is despite legal restrictions stipulated in article 128 of the code of former criminal procedure. (Ashouri, Mohammad, 73)

### **2. The need to understand written and documented rights of the accused:**

To Article 52 of this Law; "If the accused was under consideration, bailiffs are required the rights contained in this act, the accused person intended to make informed and provided in writing and the receipt and attach the file. " Thus, the former law is lacking.

### **3. The involvement of lawyers in the preliminary investigation:**

Contrary to article 128 former Q.A.D.K. against article 190 of the new law: "The defendant can be found in the preliminary stage an individual with his or her attorney. The right should start by investigating magistrate, communicating and explaining to the accused. If the defendant is summoned, it is mentioned in the summons and shall be communicated to him. The Lawyer can say truth and defend the accused or the law deems necessary with getting information about the charges and the

reasons for it. The statements of the attorney are written in the parliament. "(Mohammad Reza Zamani Darmazari, 79)

This article had been from the golden new law that was consistent with the principles of international human rights law and the law of the former, as it was not prescribed. (4). Also, in accordance with article 371 of the act; "Before the end of the hearing, if the complainant or private prosecutor on the case has a new entry is to be heard, and the attorney general or his representative can express their opinion. Before the end of the hearing, the court is required to allow the accused or his defense attorney who expresses his last defense. If the accused or his counsel states that is effective in the truth of a story in the last defense, the court is required to consider ".

Innovations and new regulations are on the allocation of article 346 of the criminal code as well as articles 5, 190 and 371 of the act. Under article 346 of the said act, "in all criminal matters, the parties may present their lawyers or attorneys. In the case of the number of lawyers, attending one of them is enough to dealing the court. "

#### **4. to ensure legal foreclosure defense attorney:**

To article 346 of the new law: "In all criminal matters, the parties may present their defense lawyers. In the case of the number of lawyers, attending one of them is enough to dealing the court. "In accordance with the provision of this article; "Other offenses in the criminal court, each party can nominate a maximum of two lawyers in court." Also, pursuant to article 347 of the act, "the defendant may apply the court to the end of the first hearing to appoint a lawyer for him. If the applicant's qualification debility court, the lawyers jurisdiction and if not possible, to the nearest jurisdiction, shall appoint counsel for the accused. ... ". Also, to the Note 2; the offenses are punishable by deprivation of life or life imprisonment, if the accused fails to introduce a lawyer during the preliminary investigation, the investigator chooses his lawyer. "And according to article 3 thereof; in this article, as well as if charges are related to chastity, the provisions of article 191 are available".

Moreover, in accordance with article 348 of the said act; in the offenses of sections a, b, c, and d of article 302 of this act, a hearing will not be formed without the presence of his lawyer. If the convicted do not introduce his lawyer or his lawyer without saying excuse not presented in court is not required to determine the lawyer and if, the lawyer without saying excuse do not present at the hearing, the court dismissed his lawyer and determines another lawyer. Appointed attorney fees shall be paid from the funds of the judiciary. "(Ashouri, Mohammad, 132)

It should be noted that under article 350 of the act; "If the accused is a lawyer, but the crimes referred to in sections a, b, c and d of article 302 of the criminal code (criminal punishment deprivation of life,

crime and criminal punishment of amputation leads to life imprisonment and intentional crimes against the physical integrity of third or more of their total compensation) and also in cases where the court determines the defendant attending, absence of the accused at trial does not preclude consideration ". To the note 1 of this article; "Deprivation of the right to have a lawyer or not advised of the right to the accused, thereby invalidates the investigation."

Previously, the single article of the lawyer chosen by the parties, adopted on 03 / 10/1991 expediency council stressed the need to said orders and assurance of the right to counsel guaranteed and intervention are emphasized. (Khaleqi, Ali, 80) in accordance with the note 2 of the single article, "when at the discretion of the Supreme Court, the court denied the defendant's right to counsel, legal and valid sentence for first-degree and second-disciplinary punishment, justice is the dismissal from a job ". Also, in accordance with section 3 of this single article, the lawyer defending a position of respect and provides jobs ironically, it is important. (Mohammad Reza Zamani Darmazari, 112) Thus, the rights of the accused and the defense of the new law are much eyed and assign materials to guarantee the fundamental rights of individuals are predicted. The rights of the community, the victim and the accused of the most important goals of the implementation of the new law, they are stipulated in Article 1 which are the parts above the law (Article 7 of the code of criminal procedure, section 3 of the act governing the single article of respect for legitimate freedoms and civil rights act 04 / 05/2004 the remedies prescribed in article 570 of the penal code are bound by them. To adopt the lawyers' lawyer to determine "the right to counsel" lawyer and assistance" indicates the importance of the lawyer's role in the determination of the rights of the community and its inevitable effect on fair trial and is based on justice, which has been emphasized in the new law. The recognition of the right of persons with a criminal defense attorney in all matters have been added on top of the 346 Q.A.D.K and in the note of the article the legislator provides: "Other offenses in the criminal court, each party can nominate a maximum of two lawyers in court"; which the purpose of the above note is that, penal jurisdiction in which the offenses mentioned – people can introduce even more than two attorneys to defend their rights in court, but in any case the maximum number of lawyers can be three people (article 385 Q.A.D.K) and in other crimes which is in the course of lesser importance, each party will be able to identify the lawyer to court. However, by the end of the hearing, the defendant can request the court to appoint a lawyer for him which in this case, the court after obtaining the debility of the applicant (Article 347 Q.A.D.K) also, in cases where the court and the defense lawyer for the victim lacks financial power deems necessary to appoint an attorney (the note of the above article).

Of the most important new developments in the code of criminal procedure is that as soon as a person was charged under consideration can have "request an appointment with a lawyer". In this meeting where should not take more than an hour, it is necessary to be careful confidentiality of investigations and negotiations and at the end of attorney can provide advice that is his client's rights in writing for inclusion in the present case. (Article 48 Q.A.D.K) But if a person considers for committing an organized crime or crimes against national security, theft, drugs and psychotropic substances, or criminal punishment, deprivation of life, life imprisonment, intentional mutilation and crimes against physical integrity of the blood-thirds full, or more, may meet with a lawyer until a week after the observation is (Article 48 Q.A.D.K). However, a recent legislative provision is contrary to the dignity of a lawyer because:

And their social status and, where appropriate, legal counsel refrains to the professional codes of conduct contrary to the law and legislators attempt to generalize the appropriate legal actions against all lawyers who are away from solicitors. Moreover, lawyers religiously, legally and morally committed to the principles of their profession, including the privacy society (in security cases) and persons known and its behavior inconsistent with it is unlike their professional codes that will not need to the above the legal limit. (Khaleqi, Ali, 127)

However, the starting point for the change was the development of the country's penal system, homework communicated and explained "the right to have a lawyer," the magistrate in charge of the preliminary investigation stage that this task should be performed prior to the study by the investigator. Even so, this should be stated right in the summons to the accused and their notification and his lawyer can get information about the charges and the reasons for it, and that it is the truth and defends or explains the law deems necessary. This statement can be written in the form of the parliament (Article 190 Q.A.D.K). More important, the "deprivation or lack of understanding" with the right to counsel to the accused thereby discredits the investigations (note 1 of article 190 Q.A.D.K); that seems extreme sanction and useful to recognize the right of the legislator provides and this confirms the crucial role of the lawyer in a preliminary stage, that the legislature is a separate consideration. Even legislators have decided that if the empathic questions or other illegal by the investigator, attorney can give him a hint. (Article 95 Q.A.D.K).

The note of legislation accompanied by a lawyer has gone so far as to accuse if the accused in the criminal punishment of life imprisonment, deprivation of life and at the preliminary stage does not introduce the lawyer, the magistrate is required to appoint the public defender (Clause 2, Article 19 Q.A.D.K). However, it seems the situation with regard to Article 191 Q.A.D.K "the lack of access" to

a recent legislative initiative have been ignored, or at least moderated; as the article provides like this: "If the investigator, study or access to all or some of the papers, documents or records inconsistent with the need to know the truth, or the issue of crimes is against national security or foreign country with the reason presents the lack of their access. Thus, the presence of the accused or his counsel will be notified within three days of protests in the competent court. It is a wonderful time to protest the court shall hear and decide "(4); the explanations and objections against it lapsed in their private attorney.

#### **5. The case study and the lack of access to records:**

In accordance with article 351 of the "plaintiff or private prosecutor and the accused or their lawyers can go to court and case studies to obtain information and to inform the president of the court in its cost of debt needed prepare the image. " However, the adaptation of the article notes, "the image of classified documents and documents related to the investigation of crimes and offenses against chastity internal or external security are prohibited." To article 191 of the law, "If the investigator knows inconsistent the study or access to all or some of the papers, documents, or records necessary to uncover the truth, or the issue of crimes is against national security or foreign country, presents with the reason the access to them. The presence of the accused or his counsel shall be notified within three days of protests in the competent court. The court is obliged to protest hearing and decide to extra time. The aforementioned initiatives are not reflective of the new law and the previous law. (Ashouri, Mohammad, 117)

#### **6. Obligation investigator to investigate new ways and reasons for the expression of the accused or his counsel and last defense:**

In accordance with article 262 of the act; the magistrate declares after the end of the investigation and if there is sufficient evidence of the crime, the accused or his lawyer says that the innocence or truth is the last defense of self-expression. If the accused or his counsel at the last defense, something to say or express a degree of truth or innocence to be effective, the investigator is required to handle. "Also, in accordance with the article 263; If the accused or his counsel for the last defense to be invoked, and none of them do not attend without excuse, without getting last defense, the decision will be gotten."

#### **Resources**

[1] Official Gazette.

[2] Mazar-e-Mohammad Reza time (culture), and the legal system's representation in international human rights instruments, and International Law Institute and the Virtual School of Law, 2014.

- [3] expediency single article about lawyers chosen by the parties,
- [4] Tondro Hamzeh and Tahereh Haqjou, the new procedure, Dadgou.
- [5] Ashouri, Mohammad, Procedures, Volume I, Tehran, reading and editing of books Humanities Universities, 2005.
- [6] Ashouri, Mohammad, Procedures, Volume II, Tehran, reading and editing of books Humanities University, 2002
- [7] Khaleqi, Scientific, Criminal Procedure Code, Tehran, Institute of Legal Studies and Research of Knowledge, 2012
- [8] Langroodi Parsley, MJ, terminology rights, Seventh Edition, The Treasure of Tehran B: articles, gazette and pamphlets
- [9] Ashouri, M. (looking at the rights of the accused in fact and law in the Criminal Procedure Code of the Public and Revolutionary Courts) The Voice of Justice
- [10] 2 - Esfahan Province Bar Association Newsletter, Volume the 16th September 2008
- [11] Internal newsletter Khuzestan Bar Association, the New Fourth Summer 2012.