



## Social Studies, Legal Role of the Lawyer in the Criminal Justice Process

Mohsen Alaei<sup>1\*</sup>, Mohammad Hosenzadeh<sup>1</sup>, Ashkan Moghaddasian<sup>1</sup> and Amirali Gholopoor<sup>1</sup>

<sup>1</sup>Department of Law, Ardabil Branch, Islamic Azad University, Ardabil, Iran

\* Corresponding Authors: Mohsen Alaei

### ABSTRACT

*The right to counsel in criminal trials is the most important conditions of a fair trial process. This requires the right and another right that is a prelude to the implementation of the "right to defense" is called. Code of Criminal Procedure of 2013, is a range of developments in relation to the presence of lawyers in the preliminary investigation that some of these changes has been a stone's rights of defense and others opposed to it and is also contrary to the principle of freedom and independence of individuals and legal counsel. Thus, the present paper deals with the explanation and analysis of new regulations and changes in the law of criminal procedure in the presence of lawyers in criminal courts.*

### Original Article:

Received 08 Dec. 2015

Accepted 20 Dec. 2015

Published 30 Dec. 2015

### Keywords:

*Social Studies, Legal Role, Criminal Justice Process*

### Introduction:

The right to counsel to ensure the rights of defendants in Iran's Code of Criminal Procedure explicitly emphasized. Because lawyers in the principles of "legal security", which is actually more important than the individual social and economic security are counting on several principles are recognized, including: Prohibition of illegal detention, arraignment, the last defense, etc. But one of the important principles of counting the defendant the right to counsel in proceedings (Hashemi, 1999, 213). Our legislators when drafting the constitution and other competent authorities before and after it had considered the case. The oven instance in our law, no one can deprive a defendant in a criminal trial the right to (a lawyer) himself/herself. If these do not be accepted by the court and in the absence of a lawyer of his choice to be determined by the court-appointed attorney. According to Article 384 of the Code of Criminal Procedure 92 after referral to a criminal court, the offenses under paragraphs (a), (b), (c) and (d) of Article 302 of the law or after the issuance of the proceedings where the file directly in criminal court proceedings, when the accused lawyer is introduced, within five days of court office manager warned him that his lawyer later than ten days after the notification to the court. If the accused does not introduce his lawyer, director of the Office, the President of the Court sends the case to be determined under the provisions of counsel for the accused. In addition to the choice of a lawyer is one of the fundamental principles of the rights of the accused in the Criminal Procedure Act 92 is predicted. Accordingly, in Article 5 of the law that the

accused must be informed as soon as possible, the issue and arguments of the alleged charges and benefit from access to a lawyer and other rights of the defense in the legislation.

### Background research

Hosseini Azad (2013) study as the right to counsel in international human rights standards and successful experience of some countries stated that among the most basic human rights, "the right to a fair trial" are not achieving treatment the full realization of this right except the two is not possible: A- The accused access to counsel at all stages of the proceedings; B- Equality and the pursuit of power and the means of defense. Salimian et al (2013) in their study as the right to counsel from the perspective of human rights and Iran have stated that the right to counsel, the most important conditions of the domestic and international fair trial in the courts. This requires the introduction and implementation of the other rights in human rights instruments "right to defense" is called. Often condemned, is not aware of their legal rights and cannot as it ought to have their claims heard the judges would guarantee the rights of defense of the right to counsel of one of the accused in numerous international documents been provided. Moazzen Zadegan (2010) in their study entitled guarantee the rights of the accused and the defense at the stage of preliminary investigation revealed that the Iranian criminal justice system, although the legislator to some of those rights in the Constitution and laws of criminal procedure has made clear, however, in conformity with the principles of fair trial and guarantees of human rights across the defects interrogation is necessary, especially in terms of predicting the unconditional right to counsel, the right to

delay the prohibition of charges and the right to revoke the rights of defendants as well as research to be resolved.

Analysis of the concept of rights

Rights, privileges and powers of the sum determined that in order to establish legal security and justice in order to guarantee the rights and liberties lawyer accused of forging area and implementation of the regulations and provisions guaranteed (Barari Larimi and Ghabouli Dorafshan, 2010, 25).

#### **Analysis of the concept of accused**

Arabic charged in respect of material weight "illusion". Tarihi say in the definition of illusion "The illusion is a mistake and what happens in the mind and imagination" (Tarihi, 2016, 185). The definition of the matter and said that "imagination something in mind, whether it exists or does not exist in the outside world" (Ibn Manzur, 1405 AH, 643). Accused in Persian means "to know and slandered by evil" is meant (Dehkhoda, 383.42). It should be noted that a person accused of a criminal case against him has been raised in the courts, while he (accused) under the protection of the presumption of innocence, which is one of the basic principles of criminal procedure. The Islamic justice system and common law jurists of the defendant as the defendant claims to be interpreted, but with the difference that in common law, as a defendant only subject to criminal and civil proceedings against the accused pleading to be read but as the defendant in Islamic law generally, including both civil and criminal trial is. Identifying the defendant, the claimant provided the definition jurists have achieved (Barari Larimi and Ghabouli Dorafshan, 2010, 26). Jurists in recognition of the defendant's claim, cited three criteria, namely: " «The plaintiff is that if concentrations Lite or is saying is contrary to the original is or who claims otherwise apparent»" (Mousavi Ardebili, 1408 AH, 563).

#### **The concept of rights of the accused in the justice system of Islam**

Rights of the accused in the Islamic legislation based on the principle of human dignity, justice and legal security was established, as follows: Set rules and legal principles from the Bible that God is evil from someone who punishable unlawful act or omission attributed to him, the disposal or expedient to make her understand. Repel evil like impermissibility of torture to obtain confessions and attract interest, such as the right to defend or enforce the right to the presumption of innocence on the accused (Barari Larimi and Ghabouli Dorafshan, 2010, 26).

#### **The right to defense**

One of the presumption of innocence is the right to defense. The right to legal and judicial guarantees set around a criminal investigation, for people who are suspected of committing a crime has taken a fair decision. The defense in the court and the court is important. One of the ways the defendant's defense counsel in accordance with the principles outlined in the Code of Criminal Procedure 92.

#### **The role and importance of lawyer in the process of hearing**

Today, in all countries need the intervention of a lawyer in the courts has been accepted. International organizations that are active in the field of human rights and especially the rights of defendants, the right to defense to provide assistance with the investigation into the charges against the

accused in court of his best examples of violation of the right to defense. Legal representation in court proceedings in the matter has been accelerated, the better the factors contributing to the trial and a just decision which the Court adopts. Intervention trial lawyer makes understanding and understanding legal issues are a problem that certainly requires expertise and practice in its work. According to Article 190 of the Criminal Procedure Code can be charged with the preliminary investigation stage, one lawyer with it. This right before the start of the investigation by the prosecutor to the accused and understood. If the accused invoked this right in the summons is issued indicating to him. Lawyer accused be informed of the charges and the reasons for it, what it takes to uncover the truth and the defense of the accused or law enforcement deems necessary, he said.

#### **The right to legal counsel for the accused to court**

During court proceedings under Article 347 Q.A.D.K the defendant may demand up to the end of the first hearing, the court appointed a lawyer for him. For authentication of the applicant established the court, the lawyers and the lack of jurisdiction of the nearest jurisdiction, the defendant, the lawyer determined. If the request honorarium attorney, the court will determine the measures taken honorarium he fits in, however, the honorarium should not exceed the legal tariff. Fees shall be paid from the funds of the judiciary.

#### **The relationship of the right to have an attorney with a private law**

Among the major branches of law is perhaps the first where the issue of private rights is the right to counsel and if you cannot accept this claim at least we can say that it has taken the legal rights than other disciplines. The right to privacy rights, but due to his original position and evolution of human society has been extended to other disciplines. Among the branches of private law we have the right to know the origin of civil rights. Commercial law are the general principles of the legal issues raised by a lawyer but cannot figure it was special. Commercial claims in our law like civil claims and a procedure ruled that the lawyer can be a fight in the meantime, although the legal status of this question in civil procedure (Shahri, 1989, 78).

#### **The relationship right of having a lawyer in the criminal law**

Including cases where the necessity and importance of a lawyer in the judicial intervention was necessary, or rather one of the most important situations that allow deprivation of liberty and violation of people's rights is the upper parts. In the criminal court system with strong sanctions and penalties execution, imprisonment, lashing, etc. deals with the prosecution of the accused or suspects and here is that many people are afraid or intimidated by the atmosphere in the interest of work or other reasons, and the action against himself/herself (Nasserzadeh, 1993, 153). According to some lawyers in criminal investigations, four theories have been expressed for the use of a lawyer and legal adviser: A) alleged or suspected from the beginning to the end of the criminal investigation not to make use of legal counsel. B) The accused or suspect in a criminal investigation (first stage) has no right to legal counsel. C) Everyone arrested as soon as they should be able to benefit from the services of legal counsel. D) Results of granting the right to legal

counsel or the accused or suspected of human rights principles is consistent. And previous opinions expressed are contrary to human rights (Ansari, 1996, 522). The Iranian regime attorney (only one of the Lawyers of Justice) investigation of the accused can be charged with a crime is evident and rogatory, but legal representation is not involved in regulatory aspects (Khalatbari, 2004, 77). Because our country adopted the Universal Declaration of Human Rights and it is therefore bound by Article 11 of the Declaration also points out that "Everyone charged with a penal offense will be presumed innocent until public in a case where all the guarantees necessary for his defense to be supplied legally establish that his fault (Nasserzadeh, 1993, 88).

#### **The right of having counsel in juvenile court**

In terms of access to a lawyer for accused offenders in the courts, first general law approved by the Expediency Council and the Code of Criminal Procedure 11 October, secondly, according to the special law on the trial versions of offenders who have not yet explicitly and not the way not was adopted on 10 December 1959 Articles 9 and 11 predict the presence of counsel that we can rely on it. Article 11 of the law states that if murder charges are the legal guardians of the child to the court announces that she has set or in person for defense lawyers to appear in court, if the administrator does not and personally to determine a lawyer in court intervention if the lawyer is not necessary to establish the child's court-appointed lawyer for misdemeanors and misdemeanors administrator can only appear in court and defend him (Malek Esmaeili, Bita, 11). Juvenile courts in the first quarter of the third section 92 of the Criminal Procedure Code as an organization and authority is expressed. Article 304 of the Act provides to all crimes in the field of children and people under 18 years of solar handled in juvenile court. Note 2 also provides that if during the examination of the defendant's age exceeds 18 years, handling charges according to the law on juvenile courts continue (Goldoost Jouybari, 2014, 307 and 308). It seems that in addressing the crimes of child and adolescent children, especially if they committed a crime under Article 315 shall be subject to the jurisdiction of a criminal court or a special court Revolution to their crimes, juvenile crimes are dealt. Either as a lawyer or a public defender appointed by the court is required. According to the text of the Code of Criminal Procedure Article 302 is required as a lawyer in crime after committing this type of crime as a result, the child can be told by a lawyer will be required.

#### **The number of lawyers**

In accordance with articles 190 and 48 of the new Code of Criminal Procedure in the preliminary investigation of a lawyer is an attorney at law is the same. But in court the Criminal Court and two children, the revolution and the military is divided, according to articles 385 and 346 of the Criminal Procedure Code in the courts and in the courts of a maximum of three lawyers appointed two lawyers that ambiguity in the law is destroyed. However, according to Article 385 of the Code of Criminal Procedure maximum number of lawyers can be three and the other crimes that are less important, of course, each party will be only the possibility of introducing two lawyer to court. The accused could, under Article 347 of the Code of Criminal Procedure until the end of the first hearing, the lawyer for his trial to be

determined by demand, in which case the court after obtaining the applicant's lack of financial ability and also taking into account the above-mentioned Article in cases where the court and the defense lawyer for the victim lacks financial ability necessary for them to appoint a lawyer. One of the new innovations and new rules on the allocation of 346 new procedure law. By virtue of this provision in all criminal matters, the parties may present their attorneys. If the number of lawyers, the presence of one of them is sufficient for the court proceedings. Note this matter in a non-criminal offenses under the jurisdiction of a court, each party can nominate a maximum of two lawyers. If the context of this article implies that the legislator respected the principle of recognizing the right of persons with counsel in all criminal matters observed.

#### **The right of having counsel in the preliminary investigation**

The right to a lawyer during the preliminary investigation and the necessity of the presence of his legal work on behalf of clients, especially during interrogation, essential guarantees to protect individual rights and freedoms and prevent the violation of the right of defense.

#### **The right of having counsel in the preliminary investigation**

The right to a lawyer during the preliminary investigation and the necessity of the presence of his legal work on behalf of clients, especially during interrogation, essential guarantees to protect individual rights and freedoms and prevent the violation of the right of defense. Counsel during the preliminary investigation leads to balance and achieve the principle of equality of arms in criminal procedures, because the pursuit of professional judges, private plaintiffs, officers of Justice attorney or his lawyers and prosecutors in the protection of the rights of the injured motivated crime to collect evidence against the accused engaged, requires lawyers active and leading the charge to defend his/her legal rights. The presence of defense counsel in investigations, thereby preventing disorder at the expense of his research and his heart. The following Islamic law as an attorney in hostilities right to counsel in all criminal or civil cases to be referred to from the beginning to the end of the trial for the accused or defendant has been permitted. In some works of Islamic law, rejecting the counsel of the accused in the crime detection stage, preliminary investigation against the requirement of justice is mentioned (Imam Khomeini, Bita, 45). In subparagraph (b) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights and the right to communicate with counsel, including the rights of the accused's defense. In French law, the right to counsel by the accused in the preliminary investigation despite the specificity of the audit were established in the late nineteenth century (Naghib, 1986, 464). In addition, the investigating judge is obliged to declare the law of the right to counsel at this stage (Oji, 1990, 708). The Code of Criminal Procedure 92. It appears that the absence of a lawyer in the preliminary investigation in accordance with Clause 1 of Article 190 of this law is to invalidate the research. Also, as mentioned in Clause 2, Article offenses punishable by deprivation of life or life imprisonment, if the accused attempted to introduce a lawyer at the stage of preliminary investigation does not, the magistrate for counsel he chooses. It can be distinguished in some cases

even the presence of a lawyer is also required in the preliminary investigation and in the absence of a lawyer appointed by the accused, the investigator is required to appoint counsel for him will be the jurisdiction of the attorney.

#### **The principle of fairness of the proceedings**

It is also the unwritten but obvious in the criminal justice principles that must be observed in all countries. In our country, although there is no legal provision on the principle affirmed. But tell that to the accused or his counsel at the time such as a quarter or half an hour and no more have the right to defend. It is contrary to the principle of such proceedings. The judge should have evidence and documents which the parties referred to the criminal, handled and examined. Ignoring or disregarding the reasons for the parties declared contrary to the principle of justice and fairness of justice (Goldoost Jouybari, 2014, 280).

#### **The guarantee of the right to defense**

The most important criterion to ensure the right to defense, the right to a lawyer for his predictions in the form of laws. Essen compliance with Articles 346 to 351 of the new Code of Criminal Procedure stipulated by the legislator. Article 346 provides that in all criminal matters, the parties can determine your stage of trial attorneys and the court, and the court is not bound to accept the power of attorney. Police chase leads to his rejection by the judge lawyer in court will be Judges (Goldoost Jouybari, 2014, 281). So Article 347 Q.A.D.K provides that the defendant can ask the court to end the proceedings for his lawyer to be determined. If you do not meet the applicant established the court, the lawyers for lack of jurisdiction and the closest area of the applicant, the defendant, appoint a lawyer. If the lawyer's request honorarium, court fees shall he set in accordance with the measures that the honorarium should not in any case exceed the legal tariff. Fees shall be paid from the funds of the judiciary (ibid. 281).

#### **Revision and appeal**

The new law will reverse previous laws, especially the Criminal Procedure Code of Article 323 Q.A.D.K Act 1999 which recognized the appeal verdicts contrary to Article 427 of the Criminal Court announced that the vote is definitive in the following cases and in the rest of the appeal may be appealed in the appellate court or the Supreme Court are:

#### **A - Crime is imprisonment of seven and eight.**

Crime report calls for the payment of money or, if they are less than one-tenth the amount or the total compensation (ibid. 323). Appeal is one of the great ways to protest the court's final judgments in criminal proceedings, most of the world, especially European countries have been accepted. The criminal justice system in Iran before the Islamic Revolution under Article 431 reform law enacted on 1958.01.05, misdemeanor courts under certain provisions in paragraph 1 and 2 the material was in the Supreme Court may be appealed. With the new law a new Criminal Procedure Code in 2013, legislator for the first time accepted the appeal of different materials and the requirements mentioned in the final vote, however, is not complete and does not include the criminal courts, but the legislator of the appeal, the court of criminal appeal of the votes of the offenses referred to in Article 302 Q.A.D.K exported.

#### **The right of having lawyer in social issues**

The right to counsel and the right of self-defense measures, not only to ensure compliance with the legal norms but also to prevent arbitrary detention is also extremely important. If enabled this right, detainees will benefit from the right to equality of arms. Adoption of detainees with access to a lawyer, and the right to self-defense, the ability to access to justice, the audit of all documents related to the case, the right to participate in the inquest and research activities related to it, to respond to the charges, and will be right protest the actions of the police and judges. Respect for the right to realize and respect the rights of others is critical. In fact, when this right is not enabled security executive failed repeatedly, and arbitrary detention increases. If no major administrative security enabled, this right are repeatedly faced with damage and injury, the right to protest the arrest and detention, and the right to fair trial is no pause. Deal abuse, torture, and forced to confess also associated with this right (Unama, 2009, 54). It's right on the main monitor and review the application provides the competent authorities. Availability and presence of the lawyers on a third monitor to provide the neutral. For example, the presence of lawyers during interrogation, use of force to obtain information and confessions, abuse and torture by the police deal impossible. Moreover, access to documents will help prevent manipulation of documents, and the opportunity to challenge the validity of the evidence and form case will provide for detainees. In the absence of such surveillance, detention reference to the normal practice will be considered for the right hand, or in other words, the assumption being guilty (ibid. 55).

#### **The role of lawyers in preventing social**

Awareness plays an important role in reducing the social damage. Ways to prevent the growth of crime and social disorder is high. In the meantime, awareness and awakening of society, is of great importance in social prevention. Many of victimization and crime, the result of ignorance and lack of awareness of how to do legal relations. One of the institutions that are effective in removing ignorance, the power of attorney is a lawyer in a number of family lawyers and legal clinics and also in various ways, including training, legal issues and more specialized activities on behalf of their clients can take a positive step in this regard. People through a lawyer, a way of maintaining the property and legal rights and how to use them taught and learn how to organize your contracts and your legal relationship, the dangers of illegal action and the others are safe learn to deal with unlawful behavior by others, how to defend themselves. If the use of lawyers generally available in the community, people are more confident about their everyday pursue legal action. In fact, as people go for medical and psychological treatment and prevention of disease, for the prevention of crime and the treatment of legal and criminal matters also need a lawyer. If the use of lawyers generally available in the community, people are more confident about their everyday pursue legal action. In fact, as people go for medical and psychological treatment and prevention of disease, for the prevention of crime and the treatment of legal and criminal matters also need a lawyer.

### Clarifying the role of the lawyer in restorative justice programs

The average family group conversation, showing examples of community participation in the criminal justice system is a criminal policy. The meeting not only the victim and the offender, but also other parties such as relatives, families and attorneys on both sides, will participate. In fact, this model brings together a collection of people who have been affected more than the crime. The complex, with representatives of civil society and judicial authorities, criminal justice, administered by a trained, formed and during which people from crime and its impact on their personal lives and feelings of talk it over with to provide their comments and suggestions about the correct situation (Sheidaeian and Naderi Fard, 2013, 93).

### Conclusion

Wisdom and fairness requires that complex legal issues, particularly in criminal matters with honor and life and the people in the relationship, the defendant can defend himself, which requires knowledge of law and private issues to achieve receive a fair trial of the lawyer. Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights in order to secure the rights and freedoms of the individual's right to assistance of counsel at all stages of the proceedings, he has predicted. Rules of Criminal Procedure new developments and communities based on general principles of law, progress and development. Now one of the purposes of the preliminary investigation, the observance of the principle of equality of arms, which is one of the fundamental pillars of a fair trial. This must be provided so that the accused can benefit from legal representation during the preliminary investigation of crimes. But in the criminal justice system of qualification, the inspection system, that is, secret research, written and secret, and the involvement of a lawyer is limited and subject to conditions. They point out that in today's world with the progress that has been created on the principles of criminal justice at the preliminary inquiry by the defendants allowing them to benefit from the absence of a lawyer. Of course, the right to a lawyer is not sufficient but must have the right to substantive as well as the court for the defense of his client, rejected the arguments of the other side and her alleged reasons for the court to provide the or to request an investigation certain make judicial authority. In the new law Criminal Procedure Act 2013, the right to defense counsel in the investigation and prosecution of crime and the accused under the more relaxed and more substantive recognized. According to the law can be charged with the preliminary investigation stage, one lawyer with it. This right before the start of the investigation by the prosecutor, the defendant communicated and understood. If the defendant invoked the right of the summons shall be issued indicating to him. Lawyer accused be informed of the charges and the reasons for it, what it takes to uncover the truth and the defense of the accused or declare law enforcement deems necessary.

### Reference

Barari larimi, M, Ghaboli Darafshan, SMT. (2010). Rights of the accused with the approach of fiqh, Islamic jurisprudence Studies, Volume 2, Number 2, pp. 23-51.

- Dehkhoda AA. (1342). Dictionaries, Tehran, Tehran University Press.
- Fahimi, Sh. (2011). Local police and its role in the prevention of crime, a Master's thesis.
- Gholdostjoibari, R. (2015). Code of Criminal Procedure, Third Edition, Tehran, publisher of the forest.
- Hashemi, S.M. (1999). Fundamental Rights, Vol. 1, No 3, Tehran, publisher of Justice.
- Hosseini Azad, A. (2013). The right to counsel in international human rights standards and successful experience of some countries, educational affairs of the Islamic Human Rights Commission, 1-35.
- Ibn Manzur, M.M. (1405 AH). Arab language, Qom, published literature field.
- Khalatbari, A. (2004). Company lawyer in investigating magistrate, the Bar Association Journal, No. 48.
- Mousavi Ardabili, A.K (1408 AH). Alqza' jurisprudence, Altbh ULA, Qom, Mkth Ali.
- Nasrzadeh, H. (1994). Code of Criminal Procedure and the freedom of printing, Tehran, The Treasure of Knowledge.
- Salimian, A.; Sedighian, A.; sajadi, A. (2013). The right to a lawyer from the perspective of human rights and Iran, the Islamic Human Rights Quarterly, Issue V, 49-63.
- Shahri, Gh. (1989). Rights record, printing, Tehran, The Treasure of Knowledge.
- Shydaian, Z, Naderifar, M. (2014). The role of lawyers in preventing crime, monthly focus, numbers 134 and 135, pp. 81-100.
- Tarihi, F.M (2016). Al Assembly, Tehran, Mktbh Almrtzvyh.
- UNAMA, 2009. A practical guide to understanding and combating arbitrary detention in Afghanistan, No2, 1-74.