

COMPARAÇÃO DOS DIREITOS DOS SUJEITOS DO MANDADO DE DETENÇÃO E PERSONAS CONDENADAS EM DIREITO IRANIANO E DOCUMENTOS INTERNACIONAIS

COMPARISON OF THE RIGHTS OF THE ARREST WARRANT SUBJECTS AND CONDEMNED PERSONAS IN IRANIAN LAW AND INTERNATIONAL DOCUMENTS

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Resumo: O objetivo do presente estudo foi investigar os direitos dos sujeitos de mandados de prisão e pessoas condenadas no sistema de direito penal iraniano e documentos relacionados internacionalmente. Em termos de métodos, é considerado um estudo descritivo, com os dados de pesquisa necessários coletados por meio de estudos bibliotecários. Nas últimas emendas ao processo penal iraniano, uma atenção especial foi dada aos direitos dos sujeitos de mandados de prisão e às pessoas condenadas com certas inovações que podem ser vistas neste contexto. Nos primeiros artigos principais da lei, tanto ao definir o código do processo penal como ao explicar questões importantes como a imparcialidade e independência das autoridades judiciais, o princípio da legalidade do processo penal, a presunção de inocência, a necessidade de informar o acusado do (s) suposto (s) crime (s), direito a advogado, adesão aos direitos de cidadania previstos na lei de respeito às liberdades legítimas e preservação dos direitos de cidadania, estamos diante de uma visão nova e positiva sobre o processo e os direitos dos acusados. No entanto, em documentos internacionais, várias regulamentações internacionais, inclusive a declaração universal dos direitos humanos, fizeram certas considerações sobre a garantia dos direitos individuais em processos criminais; Algumas das principais garantias destes direitos incluem: o direito de ser informado sobre o alegado crime no menor dos tempos, o direito de ser presumido inocente, o direito de ter um advogado, o direito de ser julgado de forma justa, o direito de ser julgado na presença de um júri imparcial, o direito de ser julgado em pessoa e etc.

Palavras-chave: direitos de mandados de prisão, direitos de pessoa condenada, detenção, direito penal iraniano, documentos internacionais.

Abstract: The purpose of the present study was to investigate the rights of arrest warrant subjects and condemned personas in the Iranian criminal law system and International related documents. In terms of methods, it is considered as a descriptive study with its required research data being collected through library studies. In the latest amendments to the Iranian criminal procedure, a special attention has been paid to the rights of arrest warrant subjects and condemned personas with certain innovations that can be seen in this context. In the very first primary articles of the law, both while defining the criminal procedure code and while explaining important issues such as the impartiality and independence of judicial authorities, the principle of legality of the criminal procedure, presumption of innocence, the necessity of briefing the accused on the alleged crime(s), the right to a lawyer, adherence to the citizenship rights envisaged in the law of respecting legitimate freedoms and preservation of citizenship rights, we are facing a new and yet positive view on the affair of proceeding and stressing out the rights of the defendants. Nevertheless, in International documents also various international regulations including the universal declaration of human rights have made certain considerations regarding the guaranteeing of individuals' rights in criminal procedures; some of the main guarantees of these rights include: the right of being briefed on the alleged crime in the shortest of times, the right to be presumed innocent, the right to have an attorney, the right to be tried fairly, the right to be tried in the presence of an impartial jury, the right to be tried in-person and etc.

Keywords: the rights of arrest warrant subjects, rights of condemned persona, detention, Iranian criminal law, International documents

Introduction

Establishment and preservation of criminal justice has remained as one of the most important wishes of the mankind throughout the history. In fact realization of the former is made possible only through holding fair trials, which itself requires the provision of the rights to litigation and defense.

The rights of the arrest warrant subjects and condemned personas guarantee the solutions and provisions aimed at the preservation of the advantages and interests of individuals who have been accused of a crime, though allegedly.

During the various stages of the proceeding, the defendants have certain rights and advantages. The former stages include the discovery of the crime, prosecution of the suspects or defendants, undertaking preliminary investigations and trial, issuance of the condemnation verdict and ultimately, the execution of the criminal sentence. During the last stage, the accused is referred to as a defendant and would no longer be subject to the defensive rights of the accused; in this regard, attention has historically been paid to the human position and, adherence to freedom and human rights; in other words, mankind has always been trying to preserve his humane rights.

Arresting the defendants is essentially paradoxical to the principle of presumption of innocence and its effects. In fact, despite the new and emerging international views on the preservation of human rights, although the new criminal procedure code is after paying attention to the defendants' rights, not only it has not been able to take step towards limitation of arrest cases, but also it has turned into a type of conflict between related affairs. Therefore, considering the high and special importance given to it regarding its essential conflict with the basic rights and freedoms of mankind, it has received a great deal of attention in many international documents and universal declarations of the human rights.

1st Subject: the concepts of the rights of the arrest warrant subjects and condemned persona

1st Word: terminology of the rights of the arrest warrant subjects and condemned persona

Before analyzing the expression of the rights of the arrest warrant subjects and condemned persona, it is crucial to elaborate on the lexical and idiomatic definitions of the related elements. In this regard, first of all we try to analyze the concept associated with each element and afterwards, we will define each element's rights in the Islamic procedure code.

Segment 1: analysis of the concept of rights

In the present study, by the word right(s) it is referred to a specified set of advantages and authorities that have been granted by legislators in order to establish and maintain judicial security and, justice in the context of guaranteeing the rights and freedoms of the subjects of arrest warrants and the condemned persona; in addition these rights are guaranteed by certain regulations and sentences.

Segment 2: analysis of the concept of arrest warrant

In terms of vocabulary, arresting has been defined as apprehension of a person who is suspected of criminal behavior (Blackwell, 2002: 32). Regarding the term "arrest warrant" it has been stated that if a summoned person or a witness to a dispute refuses to make presence in the court irrespective of the court order, the court may issue his/her arrest warrant. In this sense, an arrest warrant (warrant) is issued after a summons and is in consistence with the goal of the previously issued summons (Jafari Langroodi, 2003: 572). On the other hand, while defining arrest warrant, French scholars have stated that a warrant is the order of the court for the immediate transfer of the accused to the court and since it allows for arresting an individual, it is much more intense compared to summons (Stephanie et al., 1998: 822).

Segment 3: analysis of the concept of summons

In terms of vocabulary, summons is defined as summoning, calling, inviting and etc. (Moein,

1999: 159). Nonetheless, in idiomatic terms the law lacks any definitions for the former word. Summons is against the principles since summoning someone to a court will revoke the person's personal freedom of will (latitude) and somehow limits his/her freedom. Therefore it has been said that being summoned to a court is something like detention and hence freedom is considered as a principle, there must be a concrete reason for summoning someone to a court. In case of existence of doubts in the correctness of the act, a judge's summons cannot be effectuated (Jafari Langroodi, 2002: 31).

Segment 4: definition of jail (detention) and the nature of freedom depriving penalties

Imprisonment is the act that is taken place in a jail and detention means the same too. Hence, by jail it is referred to a place where the detainees cannot leave it since they are deprived of their previous freedoms. As it can be interpreted from the expression of Jail, the type and direction of the penalty must be clear while it should be known that by detention the only meaning that is referred to is prohibition. However, in some cases, for example in a case where an apostate woman who is urged to repentance refuses to repent, would be charged with a life-time in jail while there would be complications for her in the prison (Fattahi Zafarghandi, 2016: 58).

2nd Word: the concepts of the accused, suspect and guilty

Segment 1: analysis of the concept of the accused

In terms of its roots in the language of Persian, the word "Motaham" (accused) is driven from the word "Vahm" (delusion). As a definition of the former, Trihi states that delusion is something that is imaginary (Trihi, 2010: 56).

Segment 2: suspect and guilty

It can be stated that a suspect is an accused person who has not yet been briefed on the alleged crime(s); however the guilty is the one whose accusation has been proven in the court while there exists a previously foreseen punishment for his/her act.

3rd Word: the rights of the accused

The procedure codes of the Revolutionary and Public courts (1999), and the criminal procedure code (1994), lack any definition for the accused and hence, sometimes it has been considered that the accused is the same as the guilty. For example the article 1 of this law envisages that the criminal procedure code is the set of principles and regulations laid down for the discover of crimes, investigation of crimes, prosecution of criminals, manner of processing and sentencing the criminals as well as the determination of the duties and privileges of judicial authorities. This is while with respect to the principle of presumption of innocence, a person under prosecution cannot be referred to as guilty unless the judge has entitled him/her with absolute criminal condemnation. Otherwise, the person is merely a suspect. It seems that even in case of condemnation the person should not be considered as guilty since a criminal sentence is not a 100% proof of guiltiness of the person and it may be based on a judicial error (Akhoondi, 1998: 131-132).

4th Word: the references of the defendants' rights

The references of defendants' rights can be divided into domestic and international references

Segment 1: International References

The universal declaration of human rights includes several subjects that are related to the rights of the defendants. These subjects include prohibition of torturing and having cruel behaviors with the defendants (article 5); the right to be trialed fairly (article 7); prohibition of unauthorized arrest and detention (article 9); the principle of presumption of innocence and guaranteeing the defendants' right to defend themselves and; the principle of legality of the proceeding (article 11).

Since the universal declaration of human rights (UDHR) lacked any executive guarantees and only included some general titles, it needed further analysis and interpretation and the human rights committee has made efforts to dissolve the mentioned defects through the codification of certain covenants (Mehrpoor, 1998: 432). The international covenant on civil and political rights is comprised of 53 articles some of which are related to the personal freedoms and rights of the defendants.

The mentioned covenant was approved by the general assembly of the UN on December 16th, 1966. It was signed by the representative of the Iranian government in New York on April 4th, 1968 and it was approved by the Senate in 1975 (Ziaei, 2006: 184).

Segment 2: Domestic references

Here, we will briefly review the domestic references on the rights of the defendants:

a) The Constitution: the constitution is comprised of a series of general rules and regulations that determines the form of the governance and the high threefold organization of Iran along with their relationships with each other and the rights and freedoms of individuals against the government. The third chapter of the constitution is titled as the right of the nation and includes principles aimed at guaranteeing the rights of the defendants. In addition, in chapter 11 references have been made to some of these principles including the prohibition of searching the defendants' house without judicial authorization (principle 25); prohibition of searching the defendants' communication devices including his/her phone call records and etc. (principle 25); written briefing of the accusations including the reasons for accusing the person (principle 32); prohibition of unauthorized arrest of the defendant (principle 32); the right of the defendant to have an attorney and judicial support in case the defendants could not afford to hire an attorney (principle 35); the principle of the legality of the proceeding and punishments (principle 36); the principle of presumption of innocence (principle 37); the prohibition of torturing and forcing the defendant into an admission (principle 38); publicity of the processing so that the rights of the people are preserved (principle 165); the court verdicts must be based on legal articles and principles (principle 166); the presence of the jury in the sessions of dealing with political and press crimes (principle 168); consideration of criminal rules (principle 169) and; compensation for both material and spiritual damages (Principle 171).

b) Normal Rules: while adhering to the constitution, formal and essential considerations have been made regarding the supplication and guaranteeing of the rights of the defendants. For example, the Islamic criminal law has considered for the following issues: legality of the crime and punishment (article 2); consideration of criminal rules (article 10); accepting the right to defend (article 156); prohibition of torturing the defendants for taking admissions and confessions (article 169); prohibition of unauthorized and illegal arrest or prosecution (article 575); prohibition of unauthorized entry to the houses of people without their consent (article 580); prohibition of opening, listening to, recording and or transmission of the communications of people without legal authorizations (article 582).

2nd Subject: the basics of the defensive rights of the defendants

The primary categorization regarding the concept of right can be considered as the popular dividing of right into being a right and having a right. In this dividing, the definition of the first division bears a value-related concept and in most cases it is used to refer to goodness or correctness while having been historically prioritized over the second conceptual division of right. In its second conceptual division, right points to the fact that the owner of the right possesses certain advantages that are backed up by the legal system. The current definition of rights is the product of the modern era being grown in the context of theoretic and pragmatic libertarian movements of the modern human being. By the term of defensive rights of the defendants it is referred to the fact that the defendants have certain rights and interests and legal guarantees during the procedures. When we talk about the defensive rights of the defendant in the domains of law and criminal law philosophy, we are not pointing to the value-bearing aspect of the former term; rather we are trying to review

the benefit of the defendants from pre-established rights and guarantees during the preliminary investigations and trials. On this basis defensive rights phrase falls under the conceptual category of having a right; rather than being a right.

Segment 2: Criminal Procedure Code's definition of defendant's defensive rights

Every right is either an essential or a procedural one. The essential rights are the rights envisaged by the entire legal systems and guarantee certain values for the owner. On the contrary, procedural rights are those effective on both supporting and realization of essential rights. In other words, procedural rights are valuable since they are used for the realization of essential rights. However, their role in the realization of the essential rights is so important that it can almost be claimed that without them, the essential rights would remain as merely written words in books of law. Hence, nowadays procedural rights have been expanded to a great extent in a way that it can be said that one of the differences between the modern rights and the formerly in effect set of rights is that procedural laws are weak in the previously in effect set of rights. This is because the modern human has realized that even the best rules envisaging essential rights would be ineffective unless a proper pragmatic solution is in effect for their realization. They would be useless like a treasure chest without a key which is only subjected to instrumental uses (Seyed Fatemi, P: 37).

By taking a look at human rights documents (the universal declaration of human rights and the international covenant on civil and political rights), it can be said that the defensive rights of the defendant are aimed at execution of a fair trial while presuming the defendant as innocent and therefore, these rights are considered as procedural rights (Ashoori, P: 125).

2nd Word: Investigation of the Basics of Defensive Rights

The basics of defensive rights are the pillars of the defensive rights meaning that they are the roots of necessity and legitimacy of these rights. The following is dedicated to the reviewing of these basics (Parvizi Fard, 2012: 187).

Segment 1: Presumption of Innocence

The presumption of innocence is a broadly accepted principle in almost every legal system and it may therefore be considered as the common point between the entire legal systems around the globe. From historical aspects, the acceptance of the presumption of innocence is not exclusive to modern legal systems; rather it was highly considered by past generations too. Though, many exceptions to these considerations can be found in certain old legal systems. The presumption of innocence maintains that every person is innocent unless their guiltiness is proven using special methods in special circumstances (Ashoori, P: 127).

Segment 2: Fair Trial

Fair trial is a familiar phrase and many human rights documents have pointed to it explicitly; in a way that the right to have a fair trial has been considered as a basic right in the international covenant on civil and political rights which includes impartiality, independence, pre-trial guarantees (police investigations) and the presumption of innocence (Shams Nateri, 1999: 334).

3rd Subject: instances of the rights of the condemned personas in the Iranian legal system and international documents

The sentence or punishment of detention is one of the most popular and well-known punishments and it has been subjected to several various changes towards the enforcement of the modern knowledge in criminal law. Considering the negative and irreparable consequences of execution of detention sentences, every government tries to avoid putting people in jail and are trying to change their manners of execution of this punishment while changing its goals from a merely physical-freedom depriving mechanism to a punishment with the aim of rehabilitation and correction of the condemned people while also intending to send these individuals back to their

normal social lives.

On the other hand, the high costs of building and maintaining correction facilities (jails) for the governments, the high costs of keeping the detainees safe and healthy in crowded and overpopulated jails, the necessity of prevention of spread of contagious illnesses such as hepatitis and AIDS and, the necessity of prevention of detainees' drug addictions are other causes for the formerly mentioned change in the nature of detention sentence. Hence the governments tend to enforce alternative punishments especially regarding short detention sentences. This is because the more the population of jails is decreased; the higher the possibility would become for the execution of rehabilitation programs that are aimed to send the detainees back to their normal social lives. Nonetheless, when a person guilty of a minor crime or an accidental crime is put in jail beside an experienced and professional criminal, instead of being rehabilitated at the end of the length of his/her sentence, he/she would become a professional criminal who has learned several criminal technics from his/her surrounding people. In addition, when a citizen is detained, he/she would no longer be capable of business activity which is probably followed by losing jobs and unemployment. In this scenario, once the length of the sentence is passed and the condemned is set free, because of the economic problems his/her family experiences, he/she may be driven towards criminal actions repeatedly (Hojati, 2015: 3).

According to the article 63 of the Islamic Criminal Law (2013), in case of crimes of the fifth to eighth degree, the court is free to put the condemned under electronic surveillance in a specified perimeter if the defendant agrees to. In this case, if the crime committed by a person is considered as a level 5, 6, 7 and or, 8 crime (3 months to 5 years of detention) and if it is anticipated that there are possibilities that the defendant gets rehabilitated fully and depending if the defendant has or has not any priors, the court can transform the detention sentence of the individual into an electronic surveillance sentence if the individual agrees to it (Hojati, 2015: 5).

2nd Word: Alternative punishments for detention in the Islamic Criminal Law (2013)

One of the most important issues faced by the legal system of Iran in the context of declination of detention sentences is the utilization of alternative punishments such as suspended punishment, parole programs and execution of open and semi-open prison systems. Judicial Brokers have concluded that the defendants should not be sentenced to detention in every case. Because not only it does not result in the preset goal of prevention of reoccurrence of the crime, but also it is accompanied by various defects and harms. This has caused the tendency towards punishment alternatives for detaining.

Segment 1: detention alternatives as recognized rights of the condemned personas in the Iranian legal system

In the view of an ordinary person, suspension of punishment is the instance of weakness of the judicial system while setting a criminal free. In this person's view, conditional freedom (Parole) means lack of enforcement of punishments while the person who is set free from the jail under a parole has not met his/her punishments. In this situation where the dominant view among the people about punishment is to punish a criminal rather than rehabilitating him/her, execution of correctional policies on punishments which is followed by the reduction of detention sentences cannot be effective enough. Punishment can be effective when people accept it as punishment. The preventive aspect of a punishment is largely dependent on the way people perceive that punishment. A punishment that is not considered as a true punishment by the people will not have a preventive aspect.

Segment 2: elements effective on detention sentences

There are several factors and elements that challenge the effectiveness of detention sentences:

- 1 - Unsuitability of the environment of jails
- 2 - Creation of financial and economic problems

Segment 3: alternatives for detention penalty

1 - Warning: warning is used in case of minor crimes, the crimes committed by adolescents and the crimes committed by vulnerable people such as the elderly. While judging a case, this principle can be used as an alternative for detention.

2 - Fining: an alternative punishment which is also considered by many other legal systems around the world too, however although it may seem as a suitable alternative for detention, it does not seem suitable to be considered so because of two reasons:

a) Wealthy people can pay fines easily and this creates a sort of confidence among the wealthy people

b) The people with lower incomes must remain in jail until they pay their fines; however in countries such as France where fining is considered as an independent punishment, this issue has been resolved. In this regard, a fine is set according to the seriousness of the committed crime while every crime is categorized and the financial status of the defendant is also effective on the set amount of fine.

1 - Delayed sentences: in this scenario, the court would not proceed with the issuance of the sentence and waits for the defendant to do something good in the favor of the society and the ones he/she has harmed with his actions. If after six months the judge observes that the defendant has attended to his/her rehabilitation with a satisfactory result, the defendant would no longer be going to jail.

2 - Compensation of the harms done: one alternative punishment for detention regarding personal crimes is that in case of dealing with the rights of the plaintiff regarding the harms done to him/her, and if the plaintiff had no longer any complaint, the defendant would not be sentenced to detention.

In Iranian law, there are instances in which the substitution of the detention penalty is considered as a right for the condemned personas which include:

1 - Conditional freedom (Parole); 2- suspension of punishment; 3- transformation of punishment

Parole: the principle four of the Islamic criminal law points to the parole or conditional freedom of the detainees. In the article 38 it is observed that when a person is sentenced to detention for the first time and passes more than half of his/her time in jail, the court can set him/her free under certain conditions:

1 - Having been sentenced to detention for the first time

2 - Having been through the half of the length of punishment

3 - Showing good manners during the detention

4 - Anticipation of lack of reoccurrence of crime after being set free

5 - Compensating the losses of plaintiff

6 - The length of the parole would not be longer than 5 years or shorter than 1 year. Also the court states whether the defendant must live during the parole in a specified residence or not.

Suspension of Punishment: basically a criminal trial will end up in issuance of criminal condemnation and a consecutive effectuation of punishments for the defendant. However, there are certain cases in which because of certain reasons the courts may decide to suspend the effectuation of the sentence for a specified amount of time. In this case, when a court issues a sentence but suspends its effectuation, it is said that the court has issued a suspended sentence. However if the defendant disobeys the mentioned conditions of his/her suspended sentence, the suspended sentence would be revoked and instead, the primary sentence would be effectuated. On this basis, suspension of punishment is a privilege given to the court by the statute in order to personalize every crime's punishment. It is also in a direct relationship with the degree and seriousness of the committed crime. In fact the court considers the defendant's conditions and status and concludes that threatening the defendant to be punished in the future would be more effective on the individual's rehabilitation compared to actually putting him/her in jail. On this basis the court decides about the amount of the time of suspension of the sentence on a psychological

basis. If the defendant passes the set amount of time without committing any other crimes, his/her detention sentence would be revoked; however committing one single more crime during the sentence suspension period can result in absolute detention of the person.

Transformation of the detention punishment: transformation of the detention punishment is cited in the article 22 of the Islamic Criminal Law. This article states that the court can transform the detention punishment into a punishment that is suitable for the conditions of the defendant. However, the defendant's idea about the suitability of the punishment would be asked for. In addition the text of the article has used the phrase: the courts can... This means that courts have no obligation for transformation of sentences. In addition, the segments 1, 2 and 3 of the law of governmental incomes (1994) envisages:

1 - In cases where the maximum punishment is less than 91 days and or in cases where the subject of the crime is a driving issue, there would be fines for the committers starting from 71000 and up to 100000 Tomans instead of detention sentences.

2 - In cases where the maximum punishment length is over 91 days the court is free to issue a fine sentence instead of more than 3month detention sentences. However for crimes with a minimum criminal punishment length of 91 days or the crimes related to murder and injury as a result of driving issued there would not be any transformation to fine payment.

Conclusions

Despite its defects and objections, the modern law has several various positive aspects regarding the adherence to citizenship rights, rights of the defendants, attorneys, rights of the personas condemned to detention, the rights of the subjects of the warrant issues, proceeding and, guaranteeing fair trials. Through the codification of effective practical and executive regulations, through using the previous experiences of the professionals including the judges and attorneys, one can play a significant role in the context of guaranteeing citizens' basic and citizenship rights, the modern criminal law has born several changes in its rules and the manners of prosecution of the defendants and therefore it now includes the presumption of the innocence principle in addition to considerations for the citizenship rights while also making efforts towards the realization of a fair trial system for plaintiffs, defendants, attorneys, witnesses and etc. in the modern law, not only many previously seen limitations have been removed, but also it is now considered that the defendant has an absolute right of hiring an attorney while privileging the attorney with the right to defend his/her client. Evolution in the system of issuance of legal sentences and allocation of judicial surveillance meetings, anticipation of formation of courts for kids and adolescents, formation of children police, allocation of the right to meet the family and attorneys, anticipation of the right for compensation of damages and both material and spiritual harms done, necessity of formation or characterized files for the defendants, especially the children and adolescents, anticipation of an electronic trial system, amplification of the role and position of the attorney in the rights of the defendants and amplification of fair trial and etc. as well as the efforts made for making consistence between the criminal procedure code and the universal declaration of human rights and the international covenant on the civil and political rights other related human rights documents, are all considered as movements towards the principle of respecting the basic rights and freedoms of human.

One certain innovation of the modern criminal law with regard to the rights of the defendants can be the identification, definition and clarification of the privacy of citizens in the context of preservation of their basic rights. In this regard, according to the article 54 of the modern law, entering the houses and closed properties and searching them requires a court authorization. The right to defend and the rights of the condemned, according to the article 5 of the law: the defendant must be made aware of the causes of the prosecution in the shortest times and also he/she must be made aware that he/she can have an attorney. The article 6 of this law envisages: the defendant, the plaintiff, the witness and the other related parties must be made aware of their rights in the proceedings while the necessary mechanisms required for the effectuation of these rights are also provided. In addition, according to the article 7 of this law, during the entire stages of trial and prosecution, the entire judicial authorities and related parties involve in the trial and or prosecution are obliged to adhere to the citizenship rights stated in the law of respecting the legitimate freedoms and preservation of citizenship rights law (2004). Criminals will be both obliged

to compensate for the harms done, and endure criminal punishments for their actions according to the article 570 of the Islamic Criminal law, unless there are more intense punishments in other laws.

According to the article 48, the right to hire an attorney and meet him/her: as soon as the prosecution starts, the defendant can request an attorney. Considering the confidentiality of the investigations and negotiations, the attorneys meet the defendants. After the meeting which cannot take any longer than one hour, the attorney can hand over a written text to be attached to the case. However, according to one of the appendices of the this article, if the person is charged with a crime related to organized crimes, robbery, crimes of domestic and international security, drugs and murder, the article 302 of the law states that the defendant must be put under surveillance and he/she cannot have the right to request an attorney until a week is past from the initiation of the prosecution. No such limitation or deprivation is seen for political crimes, press crimes and crimes that require criminal punishments levels 4 and above. The former prescription is also against the legal limitations cited in the article 128 of the previously in effect criminal law.

The necessity of written briefing of the rights of the defendant: according to the article 52 of this law, once a defendant is under prosecution, the judicial authorities are obliged to brief the defendant on the rights envisaged by the related law in a written form; while also receiving a receipt which is attached to the case.

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