



Review the Principles of Fair Trial

Gafoor Yousefi

Master of Criminal Law and Criminology, Islamic Azad University of Kermansha, Kermanshah, Iran.

Abstract: *In recent decades, the emergence and expansion of the concept of "fair trial" in all types of hearings and hearings within and outside the judiciary has become a fundamental component, and even the criterion and indicator of the legitimacy of any litigation. In fact, today's procedure has become increasingly important. The best and fairest solution to a lawsuit comes from a fair and equitable hearing in an independent and impartial court with the guarantees necessary for the litigants. The credibility of the judiciary and the judiciary and the confidence of both parties to the case and the public will depend directly on the existence of a fair and equitable hearing. A fair and equitable hearing is one of the international principles of human rights enshrined in many countries' laws. Has been accepted. This Right to Protect Persons from Illegal Deprivation and Restriction of Other Fundamental Rights and Freedoms The right to a fair and just hearing is one of the most famous, most beloved and most important of all human rights that emerged during the evolution of human legal civilization. Is. The history of this right goes back to the Anglo-Saxon tradition of "legal observance", which goes back to the English Charter, which aims at examining the principles of fair trial.*

Keywords: *fair, legal, litigation.*

INTRODUCTION

The concept of fair and equitable hearing

A fair hearing is a combination of which it is useful to provide a detailed definition of what each component looks like. Proceedings means "judicial review and adjudication of matters between litigants, whether litigants or matters, in a competent court" or "litigious litigation between litigants, in criminal or civil cases, before a competent court." has been used. The concept of justification, as a second component, is a combination of fair trial in the sense of "acting in accordance with the rules and rights of any person or party or in a reasonable and just or proportionate manner", (Assyrian, 2004) but in the judicial and Legal language means having the right to impartiality, fairness, impartiality, personal interest, fairness, equity and equality between the parties to the dispute.

A fair trial generally contains a set of criteria and safeguards that are foreseen in a judicial, competent, independent, impartial and foreseeable court mechanism to ensure that the parties are entitled to due process. (Criminal Procedure Code)

Requires fair and equitable hearing and judicial decision-making on civil and criminal matters between litigants and in matters of law, in a court of law, competent, independent, impartial and non-profit, subject to pre-determined principles and procedures. And guaranteeing the legal rights of litigants at different stages of litigation guarantees this kind of litigation in different legal systems around the world, because each community's understanding of its cultural fit is different from that of other societies. But despite the differences, over the past decades a number of internationally crystallized basic rules have been widely accepted as guarantees of a fair trial.

Justice at the hearing

Judicial justice is a continuous process that goes from beginning to end, and in any case that is violated, it cannot be claimed that a fair hearing has not taken place. In the narrative traditions, justice and fairness are mentioned as the duty of the judge at all stages of the proceedings. For example, the prophetic hadith says: "Whoever is to judge among Muslims must observe justice among them in the manner of looking, pointing and sitting, and not raising one's voice against one another." (Criminal Justice)

Unfortunately, such narratives, which are abundant in the books of hadith, have rarely been analyzed from the point of view of their foundations and effects in the judicial system, especially among earlier jurists. Kelsen saw justice as the rule of law enforced by the court in each case. In his view, such a rule, even if it is apparently unfair, must be implemented because of its support for religion and society. To accept Kelsen's point of view requires that there is a coherent set of legal principles that can be applied to a variety of cases. In addition, assuming such rules exist, the judge will be charged with finding, adapting, and enforcing them in each case. Today, justice is recognized as a right. This concept is not limited to the type of proceedings and includes family lawsuits. The concept of fair trial encompasses access to a competent, independent and impartial tribunal established by law and administered on the basis of justice and ultimately leading to a fair hearing. Access to such a court is not limited to human beings, and legal entities must enjoy such privileges. In addition, justice is not limited to state courts and requires compliance with other courts, including arbitration, mediation and reconciliation. (Bazarganzadeh, 2010) Therefore, it cannot be accepted that fair trial is confined to internal boundaries and that there is no reason to depart from these conditions in the assumption that the case is related to transnational issues.

What is at stake in judicial justice is whether it can be entered into the law of subject matter in the legal system of law and outside the jurisprudence of the Commons. In other words, can the judge either abandon the law or offer a derogatory interpretation of it in order to achieve justice or fairness? A positive answer to such questions is to grant broader jurisdiction that can lead to injustice more harmful to law enforcement. Therefore, "it cannot be accepted that strict observance of law leads to the perfection of injustice" and, of course, they can be judged by resorting to principles such as "prohibiting the abuse of right or fraud or by resorting to the concepts of public order and good ethics in cases where fairness is They need to think about a solution.

International fair trial

One of the hallmarks of modern criminal law is its impact on human rights, in other words the human rights of criminal law. That is to say, criminal law must respect human rights and respect for human rights and dignity as one of the fundamental principles. In fact, human rights principles and principles are becoming increasingly important today as human rights can be said to be universal and less likely to be opposed. (Aghaji Janet Maqam, 2007) Of course, we want to respond to this. It is not a question of what human rights are. Is the purpose of the international instruments adopted in this field or is it beyond human rights? Human rights in documents such as the Universal Declaration of Human Rights, International Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Covenant on Economic, Social and Cultural Rights, etc. They have guarantees of fair and substantive due process.

But the part of human rights that is related to criminal law is about human dignity and the preservation of human dignity, especially respect for human dignity during criminal proceedings, which can be said to be both material and criminal. Includes criminal law. In general, all forms of punishment and various forms of social reaction, as well as all acts that are pursued in the course of prosecution to find a crime and prove a crime, are contrary to human dignity and respect. Human rights rules and regulations are opposed. The UN Statute and the Universal Declaration of Human Rights formally believe them. And emphasizes the value of human beings and Article 5 of the Declaration stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The effect of this type of doctrine and regulations shall be gradually punished. Like flogging and executions and other humiliating punishments, some countries, especially

European countries, were excluded from the law, in which case the French Penal Code was the first to abolish corporal punishment and then all punitive punishment. Subject to paragraph (1) of Article 67 of the Statute of the International Criminal Court, the accused has the right to be tried publicly, fairly and impartially and with the following minimum guarantees:

- A. In a language fully understood and spoken by the defendant, be informed promptly and precisely of the nature, cause and content of the charge.
- B. If the accused does not understand or cannot speak the language used in the trial or in the court, he or she has the right to a free interpreter or interpreter to assist him (Al Habib, 2015).

Fair trial in Islam

As we know, justice in the Islamic school of thought is one of the tenets of religious belief, and by this description, it encompasses the dignity and place beyond the realm of human life, so that the very foundation of existence can be said to have been laid upon it. That is where all aspects of human life are based. "On this basis, the principle of justice in the various spheres of human life demands rights and obligations that are sometimes expressed in the form of a religious scripture, and sometimes by reason of their own wisdom, this inner prophet is guided by it and in any case compatible with it. These sentences are conscientious with the principle of justice, with an innate human understanding. " This does not mean, of course, that all cases are easily understood and understood by all, as there is always a general consensus in the field, but assuming the difference of opinion and opinion is naturally dominated by the technologist. It has been publicly respected in the pursuit of justice and prosperity, and its collective conscience has become the standard of action (Human Rights and the Concepts of Equality).

As noted, fair trials must always follow a set of ethical and legal principles and consistently measure compliance with the rules and mechanisms used in all stages of the judicial process so as not to deviate from fairness. These principles are generally accepted by different legal and judicial systems; they can be referred to as general principles of law that can play a decisive role in directing a fair trial, imposing specific rules and procedures, and enforcing fundamental rights and norms. The parties concerned, in particular, require that the defendant be able to rely on the court and, if necessary, to object to the investigation and to institute an investigation. Here we will briefly examine the principles that are relevant to Shari'a and Islamic sources.

The first issue in this regard is the principle of respect and immunity of people's lives and property. In any social system based on the fundamental rights and freedoms of the people, the dignity and immunity of life, property and the dignity of men are paramount. In Islamic sources such a view is well inferred. It can be said that the basis of all the rules, regulations, and standards that govern the proceedings goes back to the same principle and is intended to objectify such a principle, that if there is no respect for the life and property of a person, a new idol will argue for justice. And fairness does not come to justice, as it is the belief that this principle itself is appropriate and requires the adoption of rules, rules, procedures, and mechanisms that guarantee the fairness of the judicial process and that objectivity and dignity are protected. Results. (Interrogator, 2012) In expressing the importance of this principle from the point of view of Islam, it is enough to point out the behavior of Imam Ali (as) against his opponents who would not only impose an unfair trial on them, but would not resort to coercive action until they had been forced. He did not even cut his share of bail. We also affirm the recommendation of the Imam (PBUH) on the non-aggression and abuse of his killer and only the exercise of legal authority.

Fair trial in civil law

- The Iranian government is an Islamic republic that was established by the Iranian people's long-held belief in the rule of justice and justice of the Qur'an following the Islamic Revolution and by popular vote.

The constitution of the Islamic Republic of Iran has been the most important step in establishing the rule of law after the Islamic Revolution. The elimination of unjust discrimination and the creation of fair opportunities for all, in all material and spiritual areas, are among the most important duties of the Islamic Republic of Iran. It is also the duty of the Islamic Republic of Iran to ensure the comprehensive rights of individuals, both men and women, and to ensure fair judicial security for all and equality before the law.

- Despite some disadvantages and disadvantages, the new law has many advantages and disadvantages in respecting the guarantees of fair and equitable trial, and if it does not undergo any major and serious changes to its rules of procedure, By using the professional experience of experts, judges and lawyers, it can be effective in ensuring the basic and basic citizenship of the people. The law is comprised of seven sections on "Generalities, Crime Discovery and Preliminary Investigations, Criminal Courts, Voting, Appeals, Appeals, Implementation of Criminal and Safeguards, Procedural Costs and Other Regulations". Is .
- The principles of fair and equitable justice are one of the most important principles of the lawfulness of crimes and punishments, as set out in Articles 3 to 5 of the new Criminal Procedure Code and other articles, which are aimed at protecting the rights of the accused and the community (Attorney, 2009).
- According to Article 5 of the new Code of Criminal Procedure, "a defendant may have a lawyer accompanying a judge during the preliminary investigation. This right shall be communicated to the accused before the investigation begins. If the accused is summoned, this right shall be served on the defendant." The summons may be made and communicated to him. The lawyer of the defendant may, with the knowledge of the charge and the reasons for it, make statements which he considers necessary to establish the truth and to defend the accused or to enforce the law. The guarantee of non-compliance with this right is invalidated by the investigation.

Principles of fair trial:

The principle of absurdity:

The basic justification is a practice whose purpose is to establish a crime without investigation. According to this principle, whenever the offense is committed, suspected or suspected in the person or persons concerned, the principle is appropriate.

"The principle of acquittal or the presumption of innocence is the basic principle of a fair trial. This principle, which is cited in important international human rights instruments, sometimes along with other rights in criminal proceedings and sometimes in separate cases, is one of the cornerstones of the new criminal procedure. The principle of innocence was first formally stated in the 1789 Declaration. French human rights have been raised, which states in Article 9 of the Declaration: "Persons shall be presumed innocent until convicted", including credible documents which have stated this principle. Article 6 of the European Convention on Human Rights, Article 26 of the American Declaration of Human Rights and Responsibilities, Article 2, Article 8, American Convention on Human Rights, Article 1, Article 7, African Charter, Article Article 7 of the Arab Charter of Human Rights, Article "b" of Rule "b", Article 40, paragraph 2, of the Convention on the Rights of the Child are all devoted to the expression more or less similarly (Shamloo, 1997).

Right to a lawyer:

"The right to choose a lawyer is one of the most important principles of a fair trial. "Because not all human beings are lawyers, so in civil and criminal cases they need the presence of a lawyer to bring justice." This principle is called correspondence or transparency.

Thus, "the defendant has the right to self-defense or to have a lawyer present at all stages of the substantive criminal proceedings, which help to ensure" observance of the rule of law ". This right has been guaranteed in numerous international instruments, the International Covenant on Civil and Political Rights, Article 14 (b)

(3), the European Convention on Human Rights, Article 3 (c), Article 6, Article 6 (6) (b) and Article 7 (7). The American Convention on Human Rights, Rule D, Article 1, Article 8, and the International Criminal Court Rule, Article 50, paragraph 2, Article 50, and Rule D, Article 1, Article 67 are international instruments that guarantee the right to have a lawyer. Land. In this regard, the Human Rights Committee has stated (that all detainees must have immediate access to a lawyer. (1) The US Human Rights Commission declares: "The right to have a lawyer under Article 8 (2) of the American Convention must first Interrogation "and the right of access to a lawyer must be exercised immediately and within 48 hours of arrest or detention."

The principle of openness of the court

Publicity means opening the court and the judicial process to the public. "The openness of criminal proceedings is one of its important characteristics. According to this rule, the courts must openly prosecute the accused. Because of this, the presence and supervision of individuals during the trial is free. The mass media can attend trials and report and publicize the news.

The openness of trials is a kind of public oversight to preserve the quality of the investigation of the administration of justice, the exercise of criminal rights, the defense of the accused and the protection of the public interest in the prosecution of criminals. "(Tadin and Khanjani, 2016) Public hearings as a fundamental guarantee of fairness and independence of process It is a judiciary and a support tool for public trust and the judicial system.

"The publicity of the proceedings must be respected both in civil proceedings and in criminal trials, but debt is far more important and necessary in criminal trials, so that access to the public was an element of unreasonableness and no trial at all. Can be closed and secret. "The principle of openness of the proceedings involves two expedients, one being to defend the accused against secret trials, and the other to gain public trust."

Valid human rights instruments have also addressed this issue, including Article 10 of the Universal Declaration of Human Rights, Article 14, Article 14 of the Covenant on Civil and Political Rights, Article 1, Article 6, European Convention, and Article 8, Article 8 of the Convention. American noted human rights.

Principle of the charge against the accused:

"Anyone arrested or detained should be informed immediately of the reasons for his or her release. The main purpose of the notification requirement is that the detained person can legally confess to the detention credit. It should be clear and include a clear explanation of the legal and real basis of the arrest or detention. In some cases, the defendant's right to be informed of the charge and its reasons is to respect his or her defense and to establish a balance between the defendant and the defendant: because the accused's ignorance and lack of knowledge of the alleged charge and its reasons undermine his or her rights of defense and individual liberties. He becomes. "(Baccaria, 1996)

In this respect, Article 117 (1) (a) of the Statute of the International Criminal Court provides: "In a language which the accused fully understands and speaks with, be informed promptly and precisely of the nature, cause and content of the charge. Paragraph 2 of Article 9 of the Covenant on Political and Secular Rights also states this. In this context, the European Court of Human Rights has held that Article 5, paragraph 2, of the European Convention on Human Rights means that a person must be arrested in language. It is easy to understand, not the technical and sophisticated language, the basic legal and factual reasons for his detention, so that if he finds his detention inappropriate, he will file a lawsuit against it. "(Bolange, 2007)

The principle of non-torture:

Torture of an accused during interrogation and criminal investigation for confession or information is an inhumane act. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in its first article, defines torture as: "Any intentional act Torture is the torture inflicted on a person for the purpose of obtaining information or obtaining confession from him or a third party, which results in severe physical or mental pain or suffering. (Bigzadeh, 2006) The punishment of the individual, as well as the act committed or likely to be committed by him or a third party, or the threat or coercion of discrimination on account of any kind and when such suffering or Torture or inducement or with the consent or disapproval or disapproval of a government official or any other official shall be considered torture. " Torture is strictly prohibited in accordance with the principles of Criminal Procedure and the Islamic Declaration of Human Rights, the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment. (Pakdel Rezai, 2017)

Independence and impartiality of the court:

"The right to be tried by an independent and impartial tribunal has become one of the most basic human rights today. This right is clearly enshrined in international human rights law and is enshrined in many national constitutions. That is, "undoubtedly one of the basic principles of law" and "a fundamental rule of law."

"Not only must the court relieve pressure from other government forces in the case, but the judge must also deal with it impartially."

However, the adjudicating judge should not have the status of a litigant in either case. He is required to sit on the bench as judge of the verdict and who is responsible for ending the case, so he must allow both parties to speak freely. He is obliged to listen to their words and then judge according to their standards.

Prohibition of arbitrary deprivation of liberty

"The issuance of an interim injunction should be solely at the discretion of the judiciary, and the judiciary and administrative authorities of the criminal justice system do not have such authority, but such detention is arbitrary. Failure to comply with the law should lead to the cancellation of the arrest and punishment of the issuing authority because, as previously stated, this leads to deprivation of liberty, which, in principle, results in a severe punishment following a judicial review and decision by a judicial authority. Sometimes temporary detention may not be considered arbitrary under domestic law, but may be perceived as arbitrary in accordance with international standards (Taghizadeh Ansari, 2008)

"The Human Rights Committee has described arbitrarily the wording of Article 9, paragraph 1, of the Covenant on Civil and Political Rights, which means both a violation of the law and a broad interpretation of the lack of fairness and the impossibility of anticipation.

Defendant's right to remain silent:

The defendant's right to remain silent is one of his or her rights of defense, which is the defendant's refusal to answer the questions of the judicial authorities and the judicial authority regarding the charges against him. (Tahmasebi, 2000) Failure to declare the accused guilty by the judicial authorities. The defendant may not be aware of any harm to the defendant who is not aware of the legal requirements. Failure to observe such a right not only leads to increased jurisdiction in confessing and confessing to the defendant in unusual and lawful ways, but also to violating the rights of the accused severely violated and deprived by judicial authority. It will.

Most criminal justice systems have recognized that the accused has the right to freely use his power to respond to or refuse to do so. In other words, the laws of the States have either provided for explicit rules or the judicial practice has gradually granted such a right to the accused.

The right to remain silent has been emphasized in many legal systems, although the human rights treaty has not explicitly stated it. The European Court of Human Rights has commented on this. "Although this right is

not specifically mentioned in Article 6 of the European Convention on Human Rights, there is no doubt that the right to remain silent in relation to police inquiries is one of the standards at the heart of the concept of fair trial provided for in Article 6 of the Convention (Javanmard, 2014).

Conclusion

One of the fundamental issues for the rule of law is justice and human rights, because justice is a right and should not be acted upon, wherever it is, injustice, injustice and the disregard for citizenship. Justice is closely related to the concept of respect for rights. In fact, justice is law-abiding behavior, so injustice is anti-law and human rights abuses. In fact, fair trial is a personal trial in the light of the law, with respect for citizenship rights and the context for promoting the rule of law. These rights are systematically regulated by national and international norms in the light of some principles. These principles, which all contribute to the fairness of criminal proceedings, are known as the principles of fair trial in all legal systems, and have always attracted the attention of jurists over the years. The Iranian penal system has not been exempted from this rule and in the course of 2013 it has paid special attention to the principles of fair trial.

References

1. Assyrian, M., (2004). Concepts of Justice and Fairness from the Perspective of the European Convention on Human Rights. Human Rights Concepts of Equality, Justice and Justice Criminal Sciences and Criminology Research.
2. Criminal Procedure Code.
3. Criminal Justice. (Proceedings) . Tehran.The Treasure of Knowledge Publications
4. Bazarganzadeh, M., (2010). Investigation of the Case of the European Court of Human Rights Judicial Thesis, MSc Thesis, University of Tehran, No. 9,
5. Aghaji Janet Maqam, H., (2007). Judicial Oversight of the Prosecutor, International Law Journal, Twenty-fifth Year, No. 39, Tehran, No. 90,
6. Al Habib, I., (2015). International Criminal Court and the Islamic Republic of Iran, First Edition, Tehran, Ministry of Foreign Affairs Press and Publication, 2,
7. Human Rights and the Concepts of Equality, Fairness and Justice, Tehran
8. Interrogator, Y., (2012). *Judicial Proceedings of the Supreme Court*, Tehran, Ferdowsi, 2.
9. Attorney A. A., (2009). The Thought of Protecting the Victims and Their Position in the World Wide and Iran's Criminal Legislation.
10. Shamloo, B. (1997). The Principle of Criminal Avoidance in Modern Judicial Systems", Criminal Sciences, Proceedings of 1997
11. Tadin, A., & Khanjani, M. R., (2016). The Principle of Alignment of the Rights of the Companions in the Criminal Proceedings Process, *Journal of Free Legal Research*, 2(2).
12. Baccaria, C., (1996). A Treatise on Crimes and Punishments, Translated by Mohammad Ali Ardebili, Fifth Edition, Tehran, Maidan Publishing.
13. Bolange, J., (2007). General Principles of Law and Law, Translated by Dr. Alireza Mohammadzadeh Vadeghani, *Journal of the Faculty of Law and Political Science*, 36.
14. Bigzadeh, I., (2006). UN International Criminal Tribunal: Theory and Practice, *Journal of Legal Research*, 18, ۱۳۹,
15. Pakdel Rezai, Sh., (2017). The Principle of Fairness in the Relationship of Governments Based on the Opinions of the International Court of Justice, MSc Thesis, Islamic Azad University, Central Tehran Branch.

16. Pour Tahmasebi Fard, & Mohseni, H., (2015). The Principle of Dominance of the Parties to the Issues and Subjects of Proceedings, New Journal of the Bar Association of the Center for Justice, No. 21.
17. Taghizadeh Ansari, M., (2008). International Organizations Law, First Edition, Tehran, Ghomes Publishing Company, No. 9,
18. Tahmasebi, J., (2000). Jurisdiction of the International Criminal Court, Jungle Publications, p. 22.
19. Javanmard. R. (2014). Human Rights Guarantees or Principles of Fair Trial in Preliminary Investigations.