

REVIEW OF RESEARCH

RIGHTS OF THE PARTIES IN PROCEEDINGS RELATING TO THE SUSPENDED STATE



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Abstract :

One of the most important tasks and responsibilities entrusted to the State care and social security provision, and in particular has health economic relations and avoid the ravages of the infringements on the market and the situation prevailing in trade of the people. The founder of the Islamic Republic of Iran, the first one who tried the efficiency of Islam rule in all aspects of field. One of the aspects of this regime is the establishment of the Organization and tools of economic issues in order to set up an Islamic ruler . Legal, juridical and basics, basics, how to handle and how cognitive crime, the criminal defendant rights, types, (including the right to silence, the use of their rights to counsel, reach etc...), a blind eye on the right ways to stop judgments against convicted, certain conclusions, strengths and weaknesses and ultimately and the proposals regarding the use of potential talents in Government Suspendedorganization has been raised.

Keywords: Individual rights, Due process of law, The government suspended.

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INTRODUCTION

Securing the social security and specially social economic relation health and prevention of offending and the existing unorganized in market and situation and condition governing on business among people had been one of the most important functions and responsibilities devolved to governments and governorships. The dazzled advance of science in the all realms particularly in the age of industry and services, being diverse of production and also provide a variety of services was caused to suppliers interested in products and new services but the progress in the field of industry and services, had been causes of much abuses such as overcharging ,setting one side contracts that had just been in favor of goods and services suppliers and as well as provided the impose of unequal conditions and mandatory sales of goods or services on consumers and is caused to spoiling of their rights, on the same basis, often countries in order to establish justice have been embarked upon an undertaking to approve laws in order to protect the rights of consumers in the field of goods and services.

THE CONCEPTS AND HISTORY OF PUNISHMENTS

Punishment has defined in vocabulary as chastisement and punishment, and retribution and reward and the governorship is also synonymous of Government. Hence the Government punishments must be regarded as one of the meaning of the deterrent penalties. Because these penalties is a chastisement and punishment in order to maintain discipline and observance of the community good purpose in front of offend against the provisions and regulations was determined on behalf of governorship. (Article 17 of the Islamic Penal Code approved 1370.) Generally, the deterrent penalties of punishment is violation of offences that have been levied according to the requirements of time and place that are called the governmental punishments, and are in front of the legal punishment fixing institution which has been existing at the legislator time and has been determined punishment for them . (Hossein, mehrpour, incidents on punishments: a note on the law of punishments in the Islamic Republic of Iran ,release year fall and winter 1368). In our country, acts of the Court of justice is by the judiciary which should be formed in accordance with the criteria of Islam, and paid to the settlement of lawsuits and protect the public rights and the development and implementation of Justice and adducing limits (article 61 of the Constitution of the Islamic Republic) as well as the official reference of grievances and appeals, is justice. The Tribunal and determine their eligibility is subject to the provisions of the law (the basic 159 of constitution j. 1.1). The writer quest of the present dissertation merely has been that can pay to aware of low in order to the rights of people in judges related in the Government punishment law not to be spoiling complainant and claimant the and never has the claims of carried out a comprehensive and obstacle research in this regard that become compensator of the all existing vacuums, the present research can only be the starting point of doing the future research in this field.

HOW TO DEAL WITH AND INVESTIGATE IN THE GOVERNMENTAL PUNISHMENTS ORGANIZATION

Investigation in the Governmental punishments organization also looks like the other branch investigator institutions is on the notice of occurrence of infringement and this information is done in various ways. Like people complaint or institutions in charge of announcing the report ((Organization of judicial inspection)). Pursuant to article 18 the regulations the Governmental punishments organization and annexed note of that complaint or reporter were divided into four categories:

- A: the report of official of the Organization of inspection and supervision of price and distribution of goods and services
- B: the reports of the Organization of inspection the entire country and other the judicial authorities, governmental and regulatory bodies of inspection organization as well as discovered an economic infringement during their performing duties are bound to report facts to the branches of the government punishments.
- C: The complaints of real and legal persons
- E: the Council of guilds of country and responsible organizations on the subject of infringement of Guild units with their inspectors

SUMMONING THE ACCUSED IN THE GOVERNMENTAL PUNISHMENTS ORGANIZATION

Summoning the person and using of forcible power for his presence in the court has bad subjects and effects. So a person's dignity and sanctity should not simply be undergo to flaw for this reason in all the legal systems of the world summoning the person known subject to certainty of the conditions .It is considered that article 124 constitution ad. k. approved 78/6/28 had adopted: "judge should not summon or arrest one, unless sufficient reasons to summon or call be available." of the articles of this provision is inferred that, until according to the appearance of reasons can not related charge of the related person should not be flawed his human dignity and summoned him . This article is a part of the legal certain principles in criminal proceedings. Therefore in the regulations of government punishments organization, has not became stipulating to the provisions of this article, however, for the heads of the branches of Government punishments organization is enforceable and lack of observance of the mentioned conditions is considered

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as infringement for the heads of the branches.

ARREST IN GOVERNMENTAL PUNISHMENTS ORGANIZATION

Arrest and privation freedom of a person has not become proved his crime is an irregularity order and contrary to the freedom principle and human beings freedom, so the use of this tool for making remedy the people in the Court is very minimal and there is a need to reaffirm it. This stipulates the control of justice proceedings in respect of the accused and the use of it needs to the stipulating. There is this stipulating in justice investigations about witness accused but there is no regulation in this regard in the punishing regulations ,purely article 11 the law implementation regulations prescribe how to apply Governmental punishments concerning to the smuggling of goods and foreign currency: "in all cases in which the Governmental punishments organization is competent to handle the branches of Governmental punishments will have the same option that judicial authorities have in investigation to abovementioned cases »judicial method of this article ,the option of arresting of accused in the files of smuggling of goods and foreign exchange has extracted for the branches of Governmental punishments. But in the other files there is a legal brief. Therefore, some of the directors and members of the State charter branches believe that given to the plan of important trade or health files and files that have private plaintiff and the fact that in the regulation of the State charter organization has not been pointed to all retentive and regulation of the investigation, the branches are forced to investigation using general rules. So with the expurgation of the above sentence that its order has been developed, the option of the State charter organization branches expanded to other punishing files. As well as this group in the strengthening of their opinion acknowledge how it is possible to the punishing branch to have the powers of judges in handling to the files of goods and foreign exchange smuggling and even less– rated but in other important files that by far have more values and effects to smuggling files, do not have this authority. So they believe that the chiefs and members of the State chartered punishments branches also have the right to arrest the violator in case of necessity. It appears that this comment is not acceptable in the proceedings of the punishing and these branches maximum in the punishing files smuggling have the right of arresting and in other files do not have this right. So if a defendant after the summons notification is not become ready they have merely voted by default not arresting him. Because firstly as mentioned arresting and privation freedom of a person that has not proof of his charge and offense is contrary to the principle and the arrest needs stipulating that such stipulating does not exist in the relevant provisions in the punishing handlings. Secondly it seems that arresting of the accused or witness even the expert, in the case of lack of presence in the Court is as a punishment of lack of attention to judicial authority and is not associated with the accused crime and basically accepting such an Executive warrant for lack of the wanted accepting of the chiefs and branch members of governmental punishments is very difficult because essentially in charges of these branches are not considered as a judge and their wanted is not considered as judicial authority wanted. Of course, in the recent approved law ,the law of fight against the smuggling of goods and foreign exchange approved 92 /10/3 the condition has changed and the chiefs and branch members of investigator should have conditions of judges employment that has been adopted and definite and will be implemented.

UNDERSTANDING THE CHARGE

The necessity to understanding the charge at the earliest opportunity may be one of the most important component of a fair hearing in a way that in all international documents relating to criminal hearing has been stipulated to this important, the importance of this matter is to the extent that has been observed to the Constitution of the country, has taken into consideration. In the Origin³² the Constitution of the Islamic Republic of Iran has been prescribed. "No one can be arrested except with commandment and order that law is determining. In the event of arrest, charges him with mentioning reasons writing is communicated to the accused and maximum within 24 hours the preliminary file is sent for the competent judicial and the trial preliminaries is provided immediately ,violator of this principle is punished in accordance with law." this question in articles 124, 127,129 gh,ad,k Ah. Adopted 28/6/78 considered of legislators. According to these provisions the judge should not summon or arrest the person unless sufficient grounds to summon or call exists he shall immediately after the presence or arrest of the accused begin the research and maximum can up to 24 hours in the event of impossibility in opportunities earlier delay this problem. After getting the identity of the accused the first question that should be understood to the accused is the charge relation. Failure to observe these provisions is by virtue of the disciplinary responsibility for the judge, in understanding of charge should be observed the following points namely the most important components of a correct understanding of charge, that should be understood to the accused are as follows:

1. Describe of the criminal operations, including the action or leaving the action that is attributed to the accused.
2. Criminal title of related behavior
3. The reasons for the relation of charge,

In understanding any of these components there are effects that lack of the correct communicate is in conflict with the defensive rights of the accused.

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RETENTIVE AND CRITERIA OF APPROPRIATE SUPPLY

Issuing repose of an appropriate criminal supply after understanding charge to the defendant is including the legal accepted principles in the various systems and seeing that the observance of legal principles in the branches of governmental punishments pursuant to article 166 constitution of the Islamic republic of Iran is necessary and essential. The question is the branches of Governmental punishments in issuing repose of the criminal supply what retentive and criteria should observe? In response to questions raised, should be said that regulations of Governmental punishments organization is quiet, but it seems to be with expurgation basis of the regulations of Criminal Procedure Act provisions can be making clear criterion for issuing the criminal supply:

These retentive with respect to after the articles 134 the criminal procedural law following as:

1. Supplying must be commensurate with the importance of the crime.
2. Derived supply should have fit to severity punishments.
3. The crime reasons in case of weakness or strength in the type of supply.
4. Charge effects have impact on determining type of supply and the amount it.
5. The possibility of the accused escape, the probability that the defendant with the freedom would be able to erase the effects and reasons of the crime is effective and interfering in the type of supply and its rate.
6. Issued supply shall not to be less than arrived damages to the private plaintiff.
7. The accused character in the type of supply is from the important factors.

Despite the mention that the legislator with regard to the necessary conditions and criteria has had about receipt of the proper supply, recognize the issuance of any of the five appointments of mentioned case is only depend on the judge handler decision and discretion.

AGREEMENT TYPES OF THE CRIMINAL SUPPLY IN THE GOVERNMENTAL PUNISHMENTS

In order to have access to the defendant and his timely presence in cases of necessity and prevent to escape or hiding or collusion with another according to article 132gh.ad.k., the judge is bound to issue one of the appointments of the following criminal supply after understanding accusation:

1. A pledge to attend with promises and dignity
2. A pledge to attend in order to determine the attendance way until the trial finishing and execution of commandment, and in the event of refusal to convert to guarantee
3. Obtaining guarantor or guarantee
4. Obtaining collateral including of cash or Bank warranty or movable and immovable property
5. The temporary detention with observance of the conditions prescribed compliance in this law

Note: the judge is reasonably required, while issuing acceptance appointment of guarantee or assurance to guarantor or guarantee –understood if guarantor be except the accused in case of the presence of the accused and lack of his presence without justifiable excuse or non-introduction from guarantor or guarantee towards receiving funds and filing the collateral will be take action accordance with the provisions of this law.

RESULTS

One of the components of the fair hearing is defensive rights of the accused that is as a set of privileges and possibilities is placed for the accused that in the light of it his rights and interests were secure. One of the dimension of the accused defensive rights is the silence right. The silence right of the accused is agree with the principles of human rights and should be respected by retentive and judicial authority. Respect for the silence right of the accused in terms of the broad human rights achievements and new readings on expansion of the territory of the principle innocence, of bright horizons of individuals entitlements of human behaviors and harmonious with human dignity and the noble status and the human generosity to accused person that has not been proof his crime, are the origin guarantees for legalize imposed punishment with observance of human and human beings standard. The maximum error of an accused person is his committed crime that with observance of the principle of being legality of crime and the principle governing on proving and supported the criminal act with him, we are encountered with the punishment that must be issued on his right. So there is no doubt that if there is the possibility of benefiting from legal and fair methods in proof the crime and impose punishment on him, so it is not permitted the deviation of minimum observance of fair hearing components. Therefore, in this regard, the following cases are resulted from the provided content:

- 1- Iran procedural law in the field of announcement and understanding hush-money for authorities the investigation and interrogation, has not explicitly determined duty and from the phrase in article 129 could not infer the duty to announcement of hush-money from the research judges and Justice retentive. This issue from the perspective of human rights has been interpreted as "facts".
- 2- With description the accused silence and his unwillingness to cooperate and utterance the explanation can not forced him to utterance the explanation and getting agreement in such cases is without any legal or religious justification.

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3-Presentation of reason and load reason is the research institution task, because its acquisition style is also of important effects of the principle of innocence and should be observed the necessity of human dignity with resorting to legal correct styles and observance ethic principles and governing retentive.

4-Considering the principle of 37 of the Constitution and the fact that hush-money is from the definite and un avoiding equipment of the innocence principle, the silence of the accused cannot be necessarily considered a reason on his crime, but merely can be account as a context next to the other and the reasons for the creation of conscionable contentment and otherwise the doubt shall be interpreted to the benefit of the defendant.

5-From the role of attorneys in his research and assistance process should not remain unaware and in this field, as was told, the current rules are come with a serious ambiguity and incompetence. What is certain is that the hush-money acceptance for the accused up to the presence of an attorney in order to respect human rights and a fair hearing can be cause of conformity of the internal regulations with the provisions of the international instruments that Iran has been joined it and has committed implementing them .

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