

The tools to control judge's impartiality in the light of Iranian Penal Procedure Law (2013)

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Abstract

Justice is a gift on which nature system is based and human has always looked for his/her prosperity in ensuring justice. Hence, one of the ideals of human community, social reformists and legal schools has been to establish judicial justice. Justice concept which called as granting the right to beneficiary, mediation in affairs and fitness among elements is to think about just initiatives, to establish social and individual justice in the light of procedural ad substantial law making. In legal justice system and as its executive arm, judge is always obligated to ensure and provide fair execution of laws and to respect fair judgment radical principles in order to keep the tights of judgment process actors. Hence, legal systems have recognized judge's impartiality principle in order to prevent situational deviations and spoiling the rights of people in their judicial laws and procedures. Undoubtedly, executing this principle and realizing its goals depends on thinking about controlling tools. Iranian Penal Procedure Law has provided such tool in order to realize mentioned goals. In present paper, we attempt to study on judge's impartiality control tools as an indicator of fair judgment in the lights of Penal Procedure Law (2013).

Key words: impartiality principle, fair judgment, Penal Procedure Law, judicial justice system

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Introduction

Judicial security is realized when courts and judicial authorities behave so that people's rights and liberties are not damaged and human dignity is not threatened. Hence, resorting to judge's impartiality principle is necessary to ensure the goals of fairs judgment principles. Another important principle of trial is the principle of trial by an impartial official which reads: independence and impartiality principle means of judgment authority is that the judges should perform their task without any political, legal and believing prejudice and judicial trial should be with arguments and evidences in the framework of governing laws. To purvey this right, article 21(1) of Human Rights Declaration reads: "anyone has the full equal right that his/her claim is decided by an independent, impartial, fair and open court." In contrary to international regulations and documents that have explicitly talked on court impartiality, in Iranian laws, one can see less explicitness on impartiality in trial and one should probe impartiality in the format of words and titles of laws. In legal term, impartiality means that during adjudication, the judge should respect facial impartiality in his behavior against parties and avoid dubious behaviors and acts against rights which would strengthen or weaken each party. Impartiality principle in judgment is a radical axiom and component in fair justice by which the judges should not prejudice his inner will and interest to one party and thinks about the victory of one party. In his book, the late Kalini writes: "during judgment, if the rights are for some relatives, the judge should pray Divinity that they have the right and their enemy is convicted and there should not be such differences" (Kalini, 2008). Likewise, based on Islamic jurisprudence teachings, equal consideration is a requirement of fair trial. It not only manifests in verdict but also the judge should behave equally in greeting, watching and other respectful deed like allowing to enter, standing, sitting and good facing with parties. Also, the judge should look at parties equally and should not be influenced by the situation and status of one part or should not attempt to achieve evidences against or for one party. However, impartiality does not mean that the judge should personally attempt to acquire reality since reality exploration and justice realization are prior to other things. Therefore, temporal sphere of impartiality is from the beginning of claim prosecution to the end of judgment and even verdict issuance and execution. Article 3 of Criminal Procedure Law (2013) has recognized this principle and reads: "judicial authorities should judge and decide on assigned accusation against individuals in the shortest time by full impartiality and independence and they should prevent any action which interferes or enlarges criminal trial process." Thus, one can accept that executing this principle needs providing and ensuring tools discussed here.

The basis of impartiality principle

The basis of impartiality principle should be looked for in the equality of people to each other and to ruling board by law. In other words, laws should support people equally and no one is superior to other ones. Although equality against law usually means citizens' equality, it seems that it can be also extended to the equality of people and ruling government or society to each other (Naji, 2006: 34). Kelssen distinguishes "equality against law" and "equality in law". "Equality in law" refers to those entities responsible to formulate and approve legal norms while "equality against law" refers to those entities responsible to execute legal norms. However, one can look at this issue in another way. "Equality against law" can be seen as the result of "equality in law". In the case that lawmaker has inserted an improper discrimination in legal texts for any reason; entities cannot realize equality against law. Thus, lawmaking impartiality would lead into judicial impartiality (Vizheh, 2004: 236). When full equality is not established among people, it is impossible to realize social justice, brotherhood and freedom in a

society. Social differences would pave the way for tyranny, aggression and inequality and they disable all principles covered by human right. To the same reason, they believe that equality is principal and freedoms are sides in realizing democracy (Hashemi, 2005: 216). Therefore, one can say that the main basis of impartiality is equality in law. In terms of lawmaking impartiality superiority and its direct impact on judgment, lawmaker should start impartiality by himself and to ensure facilities to execute this principle by thinking about needed tools to control judge's impartiality. Iranian lawmaker has recognized such facilities in Penal Procedure Law. In next sections, we explain the impacts of this principle and these tools.

The impact of impartiality principle

Attracting public trust and providing judicial security

Creating security feeling not only requires keeping individual rights and freedoms but also is a hope to conduct impartial judgments in the case of violating them. Therefore, it is not only insufficient for establishing judicial security when people have rights and freedoms while there is no guarantee to realize them through an impartial judgment in the case of their violation but also lawmaker should recognize legal controlling tools on the one hand and pay attention to such points as precision in selecting judges and providing amenities and social facilities for judges.

Simultaneous protection of the accused's defensive rights and the rights of the society

In contrary to other judgment principles which consider the accused's defensive rights, impartiality principle should be considered as the judgment rights of parties and simultaneously, as the accused's defensive rights and the rights of the society. Therefore, it is necessary that lawmaker considers this important point in expounding controlling tools that the function of these tools is to supply and ensure the rights of all penal procedure actors not just the accused.

Equal arms

According to impartiality principle, the society and the accused have equal tools to defend their own rights. Equal arms can be ensured by lawmaker's impartiality while the lack of equal arms is usually realized by violating lawmaking impartiality and although like impartiality principle it is a components joint procedure rights of both society and the accused, in practice it considers one-way relationship between criminal justice system with the accused and is a component of the accused's defensive rights. To realize the goals of criminal justice system, it is necessary that both public authority and actors of penal procedure process enjoy the same power and equal arms since the aim of penal procedure is undoubtedly to discover the reality rather than nominal formalities of trial (Ashury, 2004).

Tools to control impartial trial

Open trial

Openness of trials that its necessity is felt more in criminal affairs is seen as an undeniable necessity since it would cause that judge see himself visible and in the eyes of people and public opinion and has needed care in issuing the vote and to attract more trust to judicial system. Openness of trials principle is recognized by article 165 of Iranian Constitution Law: "trials should be conducted openly and there is no barrier on the participation of people otherwise the court identifies that its openness is in contrary to public chastity or public order or in private claims, the parties ask for not open trial." Article 352 of Criminal Procedure Law has recognized it and reads: "trials of courts are open except than forgivable crimes in which parties or plaintiff requests for non-open sessions. Upon public prosecutor's opinions, the court issues non-open trials in below cases :

- a. Family affairs or unchaste or against good moral crimes
- b. Openness interferes public security of religious/tribal feelings

Note: open trail means that there is no barrier against the participation of people in trial meetings. Therefore, trial openness would expose judge's performance and decision by public opinions. It would cause that the judge attempt more on keeping impartiality and fair trial.

Impeachment of a judge

The philosophy of impeachment of a judge is that the judge should not be involved in emotional feelings and should not issue his verdict while influenced by such senses. For instance, he should not be influenced by relative-in-law or relationship by blood. Although he may be a fair judge, such relationship can deprive him from free thinking in such cases and may cause that judge makes bias to one party. In this regard, lawmaker has ensured impartiality principle in judgment by different directions: (1) familial relationships and emotions; (2) using the services provided by one party, that is, a party is under guardianship and service of judge. Lawmaker has limited judge to prevent damaging impartiality principle; (3) previous clashes by which the lawmaker would like to prevent records and memorials of such conflict occupy judge's mind and cause that he derives from impartiality; (4) personal interests, since human's inner tendency to protect the interests may influence over weak individuals. Whenever, there are fears of judge's exit from impartiality in referred claim, each party has the right to refuse him so that another judge conducts trial. In the case of existing each reasons of refusal, the judge is obliged to avoid trail .The cases of judge's refusal are predicted in Criminal Procedure Law and are exclusive to legal or familial and causative and consanguinity of judge with parties or substantial statements before trial. To the same reason, chapter eight of section three of the law, that is, articles 421 to 425 are allocated to reasons and formalities to refuse judge. The personality of some accused causes that the judge in crime commission jurisdiction lacks competency for trial. Misuses by these accused of their job status in the region (for instance, governor general in relevant province) and negating judge's independence and impartiality would cause personal competency of another judicial autonomy. Article 397 of Criminal Procedure Law (2013) ensures it: "judgment on the accusations of heads of three powers and their deputies and advisor, head and members of Expediency Council, Guardian

Council members, Parliament members and Leadership Elites, ministers and their deputies, holders of judicial degrees, head and public prosecutor of Audit Office, ambassadors, governor general, military and police officers by brigadier degrees and higher should be all conducted in Tehran Criminal Courts jurisdiction otherwise by special laws, other authorities are competent .Note 1: holders of judicial degrees and military and police officers are subjected to this rule if they work in Judiciary or military forces .Note 2: judgments on the accusations of military and police officers subjected to this article under the jurisdiction of Military Judicial Organization are under the Tehran military court competency.

Two-step trials

It is clear that the right of an impartial trial is considered since past time as an individual and collective need in all global legal system and even in the level of International community member states, the raise d'etre philosophy of and forming International Court of Justice has been an inseparable part of the United Nations. In his speech for Human Rights Watch (April, 2008), UN General Secretary's representative stated: "the best and simplest way to diagnose the rate of respecting human rights and individual and collective fundamental liberties of the citizens of a country by their relevant government is to study issued verdicts by their courts. If it shows well justice execution, there is no need to other tangible and intangible investigations which usually require huge costs and hardworking since the verdict of a court is the mirror of laws execution." Thus, another norm which ensures judge's impartiality is the necessity of two-step trials by which decisions taken by initial judge are controlled and monitored by higher judge and this may prevent judges' deviation from impartiality. Judgment in higher authority hedges impartiality infringement by previous judge and purveys impartiality in trial process. Articles 426 and 427 of Criminal Procedure Law (2013) are the indicators of this fact. In article 427 of Criminal Procedure Law (2013), lawmaker has asserted: "verdicts by criminal courts that are seen final except than below cases can be appealed in appeal court of the same jurisdiction or in Supreme Court."

Argued, proved and justified verdict

In no legal texts, one can find a clear definition on "evident", "documented" and "justified" terms. Therefore, it is necessary to get familiar with this concept to some extent. Lexically, argument means to bring evidences and proved is to be determined by evidences and justified is plausible and admired. On the other hand, in legal terminology, argument is to use known to clarify unknown (Jafari Langrudi, 1999). Considering recent definition on argument, it seems that one should go beyond legal scope to other sciences such as logic as the main location of discussion on argument. In logic, there is an independent discussion on argument and it is discussed in details.

Argument definition in logic is to "discover unknown propositions by known ones. Argument is to devise and compose a set of propositions to discover an unknown proposition. In contrary to direct evidences, argument is an incremental and progressive action which need to pass a short or long path" (Khansari, 2007: 298 – 300). Or "evidence is a set of proposition by which one can realize another proposition and it is called evidence since desired approval is needed and since it implies desired, it is also called reason and composing and preparing it for desired implication is called argument (Mozafar, 2005). Therefore, limiting judge's authorities is the passion of verdict composer which would impact on verdict through logics, results, evidences and orientation and he is not absolute in his decision. Therefore, a framework is considered in this regard which is his obligation to argument norms which ensure the rights of parties and prevents judgment by personal interests since he is obliged to express how to achieve the logic of verdict. "In other words, judge is making judgment not ruling and he cannot issue verdict by headman arbitration; rather he should compose the arguments of his verdict (Karimi, 2007: 152). Therefore, his autonomy in issuing verdict without legal justification is limited and would bring him out of his feelings toward legal logic. It will cause his independence and impartiality. It would cause that judge prevents his feelings or values so that his verdict is not negated by high authority (Naji, 2006). It is predicted in article 374 of Criminal Procedure Law (2013): "after the end of trial, the court would issue the verdict in the same session or, if not possible, within maximum one week. Court's verdict should be proved, justified and documented by laws and principles by which it is issued. Any violation in issuing the verdict in planned period would yield to disciplinary conviction to degree four.

Conclusion

One of the most important issues which should be respected by judges in their trials is impartiality. Judge should respect justice in deciding on claims even if it is relative justice and can finally resolve the hostility. One can say that impartiality means to refuse conducting actions by which the possible winning of one party can be higher than other party. However, one should not consider impartiality as indifference and ignorance in supporting the rights. One of the most important results of impartiality is judge's consciousness richness due to the reasons decided in the claim by laws and is relied upon personal information inspired to him out of trail and deprives parties from defense opportunity. Although he should be assured in his final analysis, such awareness should be through provided evidences during trial. In penal procedures, impartiality has a particular status due to its importance since in such procedures; judges are confronting with life, property, dignity all spiritual and physical aspects of people. To the same reason, lawmaker has used legislative tools to control judge's impartiality and has done its best to pave the way for execution of this principle. According to author, this deterrent tool is effective when those factors which cause judges' deviation from justice are removed. Thus, legal systems are proposed to pay particular attention to such guidelines: precision in selecting the judges and considering their political, social, economic, personality and mental conditions to perform their judgment assignments as well as preparing proper financial and welfare facilities for judges along with legal arrangements.

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