

Judicial independence positions for pursuit and research in criminal justice system of IRAN

(Under international documents and principles of Fair trial)

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Abstract:

Judicial independence has a main role in fulfillment **Fair** trail and violation it is don't having fair trail. Several factors can be a cause for violation fair trail. In first, this violation can done out of judicial system structure and this matter caused low attention to making cause factors for Judicial independence in structure of judicature. This document want say that perhaps structure of judicature and its parts be cause for violation judicial independence. In this relation attention to governor hierarchy on courts system via foresight possibility protest to judicial order and existence administrative directorship between judicial positions is important.

Key words:

Judicial independence, inside independence, hierarchy.

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1) Independence of Authorities of prosecution (Public prosecutor)

Pursuit position in many legal systems has directorship of public prosecutor's office. One of effective position in execution criminal justice, reality, public prosecutor² incited on crimes as delegation for society and claim against accusers for certainly criminal justice that is necessary for social justice and establishment order and security in society, whether these accusers be of governmental position or normal citizen.

Since Public prosecutor is important exist difference in ideas in dependency it to executive or judicial until in international level.

Reality, dependency or independency of public prosecutor's office to executive or judicial and being capacity of Public prosecutors for pursuit or research position have important role in structure and function of Public prosecutor. In first suppose that know Public prosecutor is depend on executive, it is doubt for middle of the road for Public prosecutor because he is out of judicial system control and don't account justice and experiment of inspection systems is witness for this claim. Moreover, centralization of judicial matters in judicature order that related positions in judicial matters is depend on and under judicature because judicature due self independence of other powers is suitable place for create bed and secure independence for prosecutor. Thus, if prosecutor be depending on executive power, don't judge and never swear that it is a preventing factor in prosecutor's conscience for nonpartisan and non existence motive in claims.

Of other side, if we know Public prosecutor depending on judicial power, in this suppose, according to judicial system of countries, Public prosecutor can have two different judicial role, i.e. be collect pursuit position and research position to him that perhaps violate independent and nonpartisan of Public prosecutor, so, lawyers opposite with this gathering

roles and say that: the God on high is lawyer for someone's that to be tried with public prosecutor.³

So, camberes in this theme believe that: when pursuit and research concentrated in hands of a man in society, citizens filled with terror.⁴

So, primary researches by public prosecutor that is obliged for them, it is a matter that opposite with regulated nonpartisan⁵ principle in international documents, too⁶.

1-1) independence of Authorities of prosecution of international documents

In international documents about public prosecutor, we see two views, first: a tendency that know public prosecutor of judicial power and then present guides.⁷

Second: a tendency that account pursuit power proper subset and under judicial power and according to it enact rules. Supporters for depending public prosecutor's office to executive power reasoning that state and executive power are responsible for codifying and execution general policy of country, thus they have necessary tools for execution for one of parts of general policy i.e. external policy and executive organ for this work is public prosecutor's office and judicial power don't have necessary possibilities, while executive power executive power with extend possibilities and several ministries in polish and execution above policies has main role and independence public prosecutor's office to ex-

³ Albrecht, Hans-jorg; **Criminal Prosecution: Developments, Trends and Open Questions in the Federal Republic of Germany**, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 8, issue 3, 2000p.43.

⁴ Ashuri, Mohammad, criminal procedures, cover2, first print, Tehran, samt, 2000, page16.

⁵ - Impartiality of Judges

⁶ Sachi, Andere, governing of law and fair trial, collected lectures of second bilateral negotiation meeting for human right between EUROPE Union and IRAN, broksell, 14, 15 Marce 2003m. page22

⁷ - European court of human rights, crociani etal vs. Italy, communication. No 8603/79

² Public prosecutor

executive power cause cut and split in execution criminal policy.⁸

In front of it, supporters for depending public prosecutor's office to judicial power want creating independent structure of executive power with goal respect security and securing justice. Their reasons are protection and securing judicial involves because members of public prosecutor's office must be judge and title of judge need especial characters and conditions such as independence that is opposite with depending executive power because executive power under online policies and with support of settled politic sects can be effective in nonpartisan and independent of judicial position while judicial positions must suggestion in several items without politic matters and with nonpartisan and legal view.⁹

With thinking in international document we see that preferred tendency in these documents is depending public prosecutor to executive power that is opposite with governor system in criminal trial system in IRAN.

2-independence of Authorities of Investigation (inspector)

With attention to failure inspection system in investigation to crimes for more securing accused rights, judicial position as inspector or equal him that is member of public prosecutor's office and obliged to referred researches only, don't exist in all countries and if it exist in middle of twenty century deleted of judicial system.¹⁰

In same domain, in international documents without saying anything about

⁸ Kooshki,GholamHossein,public prosecutors office, the way for collaboration between executive power and judicial, legal information magazine,legal assistant and assembly matters of president,new duration,nom12,sixth year,winter2007,page79.but, one of necessary elements for depending public prosecutor's office to executive power is independence research position to it and exit research position of ports that are proper subset for public prosecutor's office.

⁹ Previous,page81

¹⁰ Ashuri, Mohammad,criminal procedural law,scnd cover,organization for study and codifying mankind sciences books(samt),eight print, summer2007,page10

research position or inspector just point to judge independence of judge and public prosecutor and their non partisan. In real, international view for delete inspector in recent decades and deposit primary researches to public prosecutor not done with goal increase public prosecutor's office options, but necessary works for control public prosecutor's actions and obey equality arms between parties of claim used in done reforms.¹¹

In other word, inspector deleted with aim far from inspection methods; because protectorate court toward inspector made impossible take necessary far from inspector system and settle a justice trial.¹²

In result; in international documents prevailing view is delete inspector that research deposit to public prosecutor. For example in part (j) of principles and guides of African commission say that: public prosecutors pursuit crimes that committed by state affairs especial decay, misuse of power, severe violation human kind and other fixed crimes in international law and research about these crimes. In above vote that clear deposit research position to public prosecutor, gathering objection is remain.

Although enacted a solution in this item but for matter that recent regulated that research and pursuit about state clerk deposit to public prosecutor, with attention to formal and monetary depending public prosecutor to this state, it is opposite with independent and nonpartisan principle. Now to become clear present position of inspector in IRAN criminal legal system with attention to mentioned items, we pay to place research position until we can analysis and pathology independent of pursuit and research position.

About independent of research position in present criminal system in IRAN must say that article 93 of criminal procedure law enacted in 1999 in following article 44 of criminal procedural law enacted 1911,

¹¹ Of these options that mentioned in previous time we can point to institution named accusation transaction, pursuit suspension, to keep on file case and mediation, that in these done mare try in diminish public prosecutor's options for do primary researches.

¹² Ashuri,Mohammad,previous,page11

specified to nonpartisan of research position in discovery position in benefit or loss of accused. But, of pathology for this independence some legal written say that: it is clear that research judge or inspector can do mentioned duty if he has sufficient independence, thus, being firm and under inspection or necessity in following judicial positions can in some matters make problem in security independence and nonpartisan for inspector.¹³

In same direction, we endeavor to expand examination pathology for independence and separation two pursuits (public prosecutor) and research (inspector) in bellow:

3) pathology independence and separation public prosecutor and inspector in IRAN criminal legal system:

Inspector (pursuit position) in IRAN criminal legal system in judicial hierarchy account judge and public prosecutor inspect on acts that done of him. Thus, absence independence against public prosecutor that in doing duty for his job accounts party of claim, it detect fulfillment justice trial. So, we can exanimate independence for public prosecutor of inspector in a kind analyze of corner doing primary researches by inspector and his independence in doing researches and collecting reasons, issue criminal security ruling specially ruling for prevention accused and issue extreme ruling.

•Doing primary researches:

Protection and preservation of research position independence (inspector)for obey and security defensive rights of accused and reaching to justice trial expedient that important matter research and collecting reasons on inspector as nonpartisan and independence position; because pursuit position(public prosecutor) must pursuit criminal claim as delegation of citizens that in result with attention to him role in public suer position can't assumed nonpartisan.

For exanimate this important matter in present position for independence of two mentioned position, we must say that in primary researches, public prosecu-

tor intervene in all crimes except what in capacity criminal court of appeal. A matter that in clear contrast with defensive rights of accused due absence nonpartisan of public prosecutor. But important note in this section is inspector right of public prosecutor on inspector. Although public prosecutor inspection not meaning don't see inspector independence but domain of this inspector must until where don't detect inspector independence. Mentioned inspector right in section h of article 3 regulated. But sanction to start or fulfillment research done by inspector of public prosecutor to delay perform criminal justice not settled. Research position independence of pursuit position in pursuit stage have two main sides for issue criminal security ruling and extreme ruling that we pay to them as follow:

• Authorities of Investigation independence of pursuit position in issue criminal security ruling:

In doing primary researches if collected reasons be proving on attend accusation to accused, research position must until send case to office, issue a security ruling for security accused presence in court.¹⁴

Sometimes for severe perpetrated crime, inspector doesn't any right except issue prevention ruling. In this domain, research position independence require in issue mentioned ruling action according to witnesses and reasons that formed him judicial opinion and of other judicial position not follow special of public prosecutor. It is clear that if issue not suitable ruling, its issuer (inspector) is responsible.¹⁵

¹⁴ Of course it is mentionable that in present time, international civil and politic human right committee, believe contradiction between public prosecutor's office option for accused prevention specially and don't account public prosecutor as having judicial capacity mentioned in section 3article9 of promise.(Ashuri, Mohammad and Mohammad ali, Bahmani ghajar, the method of human right committee in support of liberty right and personal security, law magazine of law and politic science college, new duration, Tehran, attumn2008,page 12-13)

¹⁵ Note of article130 criminal procedural law 1911 with see this important note say that: whenever inspector take not suitable security, it is cause for disciplinary pursuit and conviction of four degree to up.

¹³ Ashuri,Mohammad,page14

With above arrangement research position independence in issue criminal security ruling didn't see in reformed law of formation public and revolution law enacted in 2002, according to this matter that section h of article 3 mentioned law regulated that: if inspector issue temporary ruling personally and public prosecutor not agreed with it, public prosecutor opinion is binding but if public prosecutor request prevention and inspector not agreed with it, solving difference is with local public or revolution court. It is interesting that this regulated in legal duration of criminal procedure in IRAN was nonpartisan and even previous laws didn't violate research position until this limit. In primary researches after collect reasons in benefit or loss of accused by inspector, if accusation directed to accused and issued criminal security ruling, inspector obliged that give extreme opinion for guilt or innocence accused. In future subjects we analyze research position independence in issue extreme rulings toward pursuit position.

• Research position independence of pursuit position in issue extreme ruling:

Research position independence demand he after primary researches and collect reasons about accused guilt or innocence him, totally declare his opinion for guilt or innocence him in extreme ruling form. This ruling based on reasons and contexts that inspector obtain in extreme of independent and nonpartisan of pursuit position and other judicial positions that consist of ruling for prevention pursuit, abolished pursuit or guilt ruling¹⁶. In this matter rule of forming law for public and revolution enacted 2002 regulated that all extreme ruling of inspector must be in sight by public prosecutor. According to this basis, section l of article 3 previous law say that: whenever not agree between inspector and public prosecutor (one of them believe to guilt or abolish or prevention accused pursuit and other believe to against it) remove difference do in public and revolution

¹⁶ It is important say that in article 165 of criminal trial principles law said the phrase (arrest ruling for guilt to trial), while in section k of article 3 reformed formation law for public and revolution, said phrase guilt ruling. It seems that the criminal trial principles law phrase be more useful because not proved guilt for accused in public prosecutor's office stage.

lution court of place and act according to court decision. So, if create difference between inspector and public prosecutor in kind of crime according to section b of this article, solving difference is with public or revolution court. In this matter, research position independence of pursuit position respected until acceptable limit, but in some matters we witness violation research position independence toward examination position (issuer judge of order) that we pay to it after description independence of this institution of international documents and its position in present criminal system of IRAN.

4) independence for investigation position (court judge)

In duration investigation, main stage is investigation in court. Reality, in this stage all tries of judicial positions fulfilled and clear guilt or innocence of accused. So, investigator position in this stage (judge) is more important judicial position and all tries for securing independence for judicial system reach to end.

With see on international documents as mentioned, release judge apply to a man who is responsible to issue order. I.e. the aim judge in international documents is investigator position and out of judges as members of public prosecutor's office and named of public prosecutor as a separated position of judicial system in laws. Vice versa in criminal laws of IRAN the end of judge is everyone that is employer in judicial power and has judicial grade.

5) Pathology independence for investigation position in criminal system of IRAN

About violation research position that done of investigation position, we can point to part(1)article14reformed of constitution law for general and revolution law that according it a court that is investigator position, can action to remove defect and complete case with saying detect items of related public prosecutor's office, then, independence of research position diminish toward investigation position,

Certainly, according to written view in recent item, even independence and nonpartisan of investigation position violated because if the bed for using one's

influence or retain in investigation for example for detect in researches sited in option of investigation position, in real, his nonpartisan questioned.

Moreover, according to part c of article 14 mentioned law, for observe independence public prosecutor's office toward court, only inserted crimes in bill of indictment investigated and the court don't right to investigate higher than related crimes in bill of indictment.

So, for, violation judicial independence for investigation position of high position, we can point that according to principle (61) of constitutional law, judicial power actions done by courts that must consist according to Islamic standards and solve claim and extend and perform justice and set up divine limits and according to principle (159)of constitutional law formal reference for plaint and protests is public prosecutor's office and formation and determining their capacity based on law. But with attention to above principles, it seems that in some cases with false explanation of duties and options of positions and superior chiefs¹⁷, diminish independence and nonpartisan of investigation position in duration investigation. Thus, in this relation we can point to a directive¹⁸ that during it ordered to establish a unit with especial pursuit unit title. In this directive say that:

For information of accurate operation issued orders of me by administrative and judicial managers and collecting information in this domain and for perform effective supervision and true evaluating their function, formed especial pursuit unit in directorship domain and it is necessary that:

- A) Of notification time for this directive, announce image of issued order on cases, reports and done letters with me for reflection and pursuit to mentioned unit.

¹⁷For these options and duties we can point to principle(158)of constitutional law(first part)and then Apart of article(1)dutes and options law for judicial power chief enacted1999/12/8 about create organization(administrative and judicial)necessary and suitable in administration of justice.

¹⁸ Directed number1/84/8219 date 2005/7/4judicial power chief

- B) Pursuit unit obliged to pursuit all issued orders by me and present its report.
- C) All administrative and judicial managers obliged to collaborate with mentioned unit and it is necessary that action fast for sending reply letters of that unit.
- D) Inspection on perform concept of this directive is on directorship unit.

It is interesting that the method of superior in perform criminal justice is opposite with independence and nonpartisan principle for investigator judge, namely with establishment mentioned unit true and legal way for pursuit judicial votes or protest to them that are revision or restitution in integrum deserted and with issue order for address to judges, their independence will be diminish.

Conclusion:

Judicial organization so as other organizations requiring organizes duties and options and hierarchy. Examination judicial power show that two kinds hierarchy are distinct able. One of them related to linear relation between judicial positions and foresees inspection in some stages that according to this, following judicial references are obliged to high judicial references. In legal system of IRAN with separation between taking decision for under investigation topic and its products(such as capacity), obligation for following of high references is in second stage and then after issue urging vote, the opinion of general figure whether civil or criminal not binding for sent back court.

Foresee in judicial option for chief of judicial power such as possibility to again investigation about positive votes of judicial references based on being against canon according to article18 of constitution law for general and revolution law counted in conflict with interior independence of judicial organization. This meaning confirmed according to interpretation law article 18 of constitution law for general and revolution law. Distinction chief of judicial power is permit for restitution in integrum and case about votes issued of distinction branches refer to Supreme Court branches and in other items to pious

reference for nature investigation and issue suitable vote.

For remove this problem we can use some ways:

It would foresee necessary conditions for chief of judicial power for incumbency judicial post totally or distinction of chief judicial power as foundation for investigation topic by a high judicial reference and if permitted, it will investigated anew.

Being hierarchy in public prosecutor's office system is one of old governor principles on this institution, but under necessities of justice trial regulated. Validity for inspector decisions depend on public prosecutor confirmation even in limit items and giving research judge options to assistant to public prosecutor following of public prosecutor that they are counted as main items for violation judicial independence. Article3 of criminal procedural plan is as one of governor principle to procedure emphasis on judicial reference independence. Judicial references must with total nonpartisan and total independence investigates and takes a decision in short time to related charge. The word judicial references

In this article has release and consist of public prosecutor's office judges too and this article could hope us for promotion judicial independence for judge of public prosecutor's office, but investigation rules for plan say that: legislator many attention to practical reflex of judicial independence principle in rules. Seeing right for public prosecutor on searches(article73), giving some parts of researches to inspector(article76), refer case to inspector by public prosecutor(article89), possibility doing search by assistant of public prosecutor and confirmation extreme decree and security decree ending to prevention accused by public prosecutor(article92) and...confirmed above opinion.

For doesn't bad effect administrative directorship on judicial function some notices are important:

First: administrative managers in judicial power have judicial post or have judicial precedence. Using of managers of other parts in judicial power can end to not judicial independence view in operation judicial options.

Second: whatever administrative managers option more clear, possibility for bad use of it be more limit on judicial function of judges.

Third: possibility for protest to administrative managers decisions due bad influence on judicial independence on judicial references or investigation to administrative violations help for promotion interior independence of judicial power.

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