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Review Article

Ethics and Law: The Place of Fairness in Fair Proceedings

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Abstract

Introduction: Justice and fairness are two basic moral concepts in law. All judges, in the performance of their judicial duties, have faced the demands of issuing "just" and "fair" verdicts many times, without perhaps paying attention to the meanings of justice and fairness. Therefore, in the present study, the place of fairness in fair proceedings has been examined.
Materials and Methods: The current review is descriptive and analytical and based on a library study.
Conclusion: The rule of fairness, which is the purpose of this research, means considering the circumstances and conditions of the case and involving them in giving the appropriate decision. In the Roman, Germanic and Common law legal systems, fairness is a concept that entered these systems from the past and means a decision based on the judge's conscience. In the common law system, equity is one of the sources of rights; However, fairness is not stated as a rule in Iranian law, and some jurists have proposed it as a source of law that is not written. On the other hand, this concept also has the characteristics of a legal rule and has many applications in law, so it can also be a legal rule.
Keywords: *Ethics, Fairness, Justice, Criminal proceedings, Fair proceedings.*

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INTRODUCTION

It is possible to create balance in criminal proceedings under the rule of law. Realization of a fair trial requires the observance of certain formalities, and in order for a trial to be considered fair, it is necessary to observe the principles of the defendant's defense rights on the one hand and the principles of the plaintiff's defense rights on the other hand [1]. Undoubtedly, one of the ideal principles of procedural rights, both civil and criminal, is the principle of fairness. We call this principle ideal because the Iranian legislator has not explicitly or implicitly mentioned the need to implement and adhere to it anywhere in the law, but it is considered an important step in the realization of judicial justice. The meaning of fair trial here is the judicial review of the claims along with the establishment of equality and non-discrimination among the litigants. In other words, a fair trial requires that the claims of individuals be dealt with under completely equal conditions. In addition to the principle of equality between litigants, fair proceedings are subject to several principles and components, the most important of which can be mentioned as follows: Judge, the principle of the need to deal with claims within a reasonable and conventional

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deadline, the principle of the ability to appeal decisions before a higher authority, and the principle of the need to observe correspondence between litigants [2, 3].

Now, in this regard, the question is raised, what can be the role and position of the rule of fairness in a fair trial? Can fairness play a role in achieving a fair trial? For example, is it possible to draw the process of proceedings, especially criminal proceedings, by relying on the rule of fairness, according to the personality components of individuals, and accept the principle of personality of the proceedings as well as the principle of personality of punishment? Justice in law is an internal force or factor that comes to the aid of conscience and causes real justice to be given priority over legal justice. In other words, fairness is a general rule that can be used to modify or allocate other minor legal rules in the enforcement position [4]. Hence, fairness is a factor that causes even if something is legally free of any flaws and defects, the excessive results resulting from it are not accepted and not implemented. It follows from what has been said that a fair trial is a different concept from a fair trial. Because this type of proceedings is drier than fair proceedings, while fair proceedings are more flexible. A fair trial is better than a fair trial due to the consideration of the special conditions governing each case, and it can give the oppressed the right and realize justice. The reason for the distinction between fair and just proceedings also goes back to the distinction between justice and fairness; fairness and justice should not be considered the same; In fairness, more attention is paid to the moral aspect of legal relations, but in justice, more is relied on legal aspects. Therefore, accepting an effective role for fairness in the trial process will help us to go through a fair trial and reach a fair trial; This can also be considered as another important step in realizing judicial justice. The most important issue discussed in this research is the explanation of the role of the rule of ethics and fairness in realizing a fair trial and delineating its executive scope. In this research, the researcher tries to prove the role of fairness ethics in the trial process, to pass the fair trial and reach the fair trial; Because in a fair trial due to paying attention to the special conditions governing each case, the right can be asserted and justice can be established better.

MATERIAL AND METHODS

The current review is descriptive and analytical and based on a library study.

DISCUSSION

Exercising the right to fair trial

Fair or fair trial means general guarantees that are provided in the judicial mechanism in order to respect the rights of the parties in the trial process of all types of claims before a competent, independent, impartial and predictable court. Therefore, this goal must be observed in the judicial process.

According to paragraph 1 of Article 6 of the European Convention, the said right and the guarantees provided in it include lawsuits related to "civil rights and obligations" and accusations in the "criminal field". In the light of the matter and according to the provisions of the mentioned article, it seems that only the lawsuits related to the two classic civil and criminal areas that are handled by a court are subject to the rules related to fair proceedings. At first, the member states of the European Convention on Human Rights were more inclined to such a narrow interpretation of Article 6 and did not consider disciplinary, administrative claims and in general what were traditionally outside the scope of civil and criminal claims to be included in this article. Gradually and with the extensive interpretation that the European Court provided of the provisions of Article 6 and especially of the scope of civil lawsuits, these lawsuits became within the scope of the civil part of Article 6 of the

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Convention [5]. In the judgment dated July 16, 1971, in the case of Ringeisen against Austria, the Court clarified that it is not necessary that the parties to the lawsuit are private law persons and that it is not important that the law of the ruling on the lawsuit is criminal, civil, or administrative. He also evaluated the fact that the investigating authority is a public court or an administrative body, as having no decisive importance in leaving the lawsuit out of the scope of Article 6. A few years later, on June 28, 1978, the Court, in the case of Konig against Federal Germany, considered the fact that the government administration acted on the behalf of a private person or in the form of public authority in the subject of the lawsuit, as having no decisive importance for not applying Article 6 to such lawsuits. He knew the claims. In other words, the court included all such claims under the scope of civil claims in Article 6, and as a result, it was necessary to apply the rules of fair proceedings to them.

Since the beginning of the 1990s, the court presented two criteria regarding the application or non-application of Article 6 to civil claims and administrative claims. In the case of civil lawsuits, he presented the criterion of personal and financial interest for the application of Article 6 and the criterion of applying the discretionary authority of the administration in making decisions and exercising public power and sovereignty in the case of administrative lawsuits, so that a lawsuit is excluded from the scope of this article [5].

In many areas, based on practical and technical needs and speeding up administrative actions, the administration and administrative officials, while having the authority to impose punishment, have quasi-judicial powers in handling and resolving their claims with citizens; But based on these necessities, the guarantees considered during the proceedings against the offending citizen or administrative officer are minimal, and in no way comparable to what is referred to as a classic proceeding in a court. Another important field is disciplinary litigation in both governmental and non-governmental domains. The jurisprudence of the court has generally and systematically not considered disciplinary claims related to guilds and non-governmental jobs that are dealt with by the disciplinary institutions related to each guild in the field of civil lawsuits, and it has considered the existence of a determining effect of a disciplinary punishment as a necessary condition in this regard. In other words, punishments such as warning or reprimanding an employee have no effect on the performance and continuation of his job, and accordingly, it does not fall within the scope of civil lawsuits in Article 6 [6]. In the case of disciplinary lawsuits in government offices, the criteria of the court in applying or not applying Article 6 have changed over time. At first, the judicial procedure of all disciplinary lawsuits had evaluated the government outside the scope of applying fair trial guarantees. Of course, there was an exception regarding contract workers and the claims of this group were subject to fair trial provisions (opinion dated October 17, 1995 in the case of Darnell 28 against England). Then he presented another criterion regarding claims related to the employment status of employees, based on which, since this area is under the control of the administration and is not included in the private rights of the individual; Article 6 is excluded from civil lawsuits. After that, the court presented a more specific and general criterion regarding disciplinary lawsuits and protests of government employees against their respective departments. Based on this criterion, if the office employee participates in the exercise of public governance in his work; Disciplinary lawsuits related to this employee are outside the scope of Article 6 and the application of guarantees related to fair proceedings. The thing that can be criticized in this regard is considering the type of employee's activity as a criterion for having or not having a fair trial. In other words, here the nature

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of the act of the right holder and, in fact, his employment status is the criterion of the act and not the right in question. In public and administrative lawsuits based on the fact that the subject does not belong to the exclusive and special sphere of exercising public sovereignty; or in certain lawsuits citing that the rights resulting from the lawsuit in question are not among civil rights, or what is related to political rights, the court has stated that it is outside the civil scope of Article 6. For example, lawsuits related to citizenship issues, measures related to maintaining public order in deporting or banning the entry of foreigners, election lawsuits are seen in the judgments of the court [7]. In the case of criminal lawsuits, the court has not given a determining role for evaluating and assigning domestic law to criminal violations. Here, as an example, we can mention the inclusion of the criminal part of Article 6 on some administrative punishments (especially regarding financial and monetary punishments). If in domestic laws, in line with the policy of decriminalizing some violations, there has been a change in terms of the investigation authority, and the authority to investigate and impose punishments is delegated to some institutions and administrative authorities; According to the court, there will be no change in its nature, and if there are mentioned criteria related to the criminal field in the aforementioned lawsuits; These lawsuits are within the criminal domain of Article 6, and the provisions of Article 6 and the guarantees mentioned in paragraphs 2 and 3 of this article regarding criminal lawsuits are also mandatory. Of course, it should be noted that the application of some principles related to criminal procedure, such as the principle of acquittal, regarding administrative punishments in terms of practical, technical needs, or the need to speed up administrative affairs (especially in cases where a punishment is applied almost automatically and systematically) seems inappropriate. Accordingly, failure to comply with this principle, subject to the existence of judicial control over such decisions in accordance with the conditions of fair proceedings, is not considered contrary to the provisions related to fair proceedings. It is also possible that a disciplinary lawsuit is included in the number of internal lawsuits in the criminal area of Article 6 due to the type of punishment. This case is mostly related to military disciplinary lawsuits and disciplinary punishment of prisoners [8].

Guarantees constituting the "right to a fair trial"

In the European Convention on Human Rights, as well as international documents and conventions related to the right to a fair trial, or in the judicial procedure of the institutions related to the control of respect for these documents, a set of guarantees for the litigants is foreseen. This set includes: public and fair proceedings by an independent and impartial legal court within a reasonable period of time with respect to the right to defense, the right to access the file and documents related to the lawsuit, the right to have a lawyer, the right to receive financial assistance or the right to two-stage proceedings. Of course, cases under the title of implied guarantees have been added to the listed guarantees based on the European Court's case law.

General guarantees

This group of anticipated guarantees will govern all criminal and civil lawsuits (with the wide interpretation of the Court of their jurisdiction). The requirements mentioned in this category are:

A) The right to access (objection and filing a lawsuit) to an independent and impartial court

In order to benefit from a fair trial, what seems necessary before anything else is the right to protest and file a lawsuit. In fact, without the right to file a lawsuit, a fair trial will be ruled out as the

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end of the matter, and what guarantees should be taken into account and observed during the trial, will be raised after the right to file a complaint.

B) The right of access to the court

Although this right is not explicitly mentioned in Article 6 of the Convention; However, due to the totality of the provisions of this article and the obvious necessity of having the right of access to justice, the court and the judge in order to apply other guarantees during the litigation, the existence of such a right is simply confirmed. Accordingly, according to the opinion of the court (the opinion dated February 21, 1975 in the case of Golder 30 against England), the existence of all the guarantees provided in Article 6 cannot be understood without the existence of proceedings, which require the right to sue and complain in court. The member states of the convention will be obliged to act in order to provide the conditions for enjoying such a right. These preparations have two material and legal dimensions. In the material field, possibilities such as the right to be accompanied by a lawyer and translator have been mentioned. For example, in the judgment mentioned above, not allowing a prisoner to consult with a lawyer in protesting the behavior of a prison guard has been considered as a material obstacle to the right to access the court. Similarly, in the legal aspect, the legal provisions or regulations of the member countries should not be in such a way that it somehow prevents the enjoyment of this right or does not allow an individual to file a lawsuit due to ambiguity [5].

From the point of view of the European Court of Human Rights, whether we call an institution a commission, council, court, tribunal or use other titles; This will not have a decisive effect on whether the said institution is necessarily considered a court in the sense of Article 6 or not. In fact, what is the criterion and criterion of Article 6 in its application to the proceedings of an organ is its judicial function and role, and the designation of a reference as non-judicial by laws or internal judicial procedure is not considered a necessary criterion for the court. In addition, the condition of its legal establishment in this article is based on the necessity of the legitimacy of the formation of the said institution, and the determination of its judicial or non-judicial nature by the legislator will not affect the nature of the functioning of the said institution [9].

C) Independence and impartiality of the hearing authority

The issue of independence and impartiality of the court has been one of the most controversial issues related to Article 6 and one of the main differences in the judicial procedure of the national authorities of the member countries of the convention on the one hand and the judicial procedure of the Commission and the European Court on the other hand. On the one hand, regarding public judicial authorities and administrative courts, there is often a strong difference of opinion between the internal authorities and the procedure of the court regarding the composition of court members, the issue of the prosecution and the role of the public prosecutor, and on the other hand, the issue of independence and impartiality of administrative authorities and officials. Even in France, due to the existence of two public judicial systems and administrative judicial systems, this difference of opinion exists among internal authorities. Clean court is more inclined to apply the provisions of Article 6 more widely, even to the claims on which judicial application is often doubted. From the point of view of the State Council, until the early 1990s, the regulations related to fair proceedings were exclusive to lawsuits raised in judicial authorities and did not include administrative authorities [5]. Regarding the evaluation of the independence of the court, the court mentions two criteria, the composition of

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the members and the way they are determined, and the existence of guarantees that exist against the pressures outside the jurisdiction. This independence is not limited to the absence of a relationship between the authority and the litigants, but includes independence from any foreign power. The independence of the hearing authority has two dimensions: the independence of the person or natural persons conducting the hearing and the independence of the hearing authority in terms of its structure and organization [8]. The court considered the mere presence of one member of the court, which leads to an imbalance between the parties to the lawsuit, (without considering his function as a violation of impartiality) as a violation of the principle of impartiality. In connection with the principle of impartiality, personal and individual or objective and practical impartiality can also be considered. Regarding the first dimension, it is assumed that the judge or the investigating person is not prejudiced in favor of one of the parties to the lawsuit. In fact, the assumption of personal or individual neutrality is the main one, which can be violated or rejected only if there is a reason to the contrary. Regarding the objective or practical neutrality, what is mostly used as the criterion for action is the appearances and evidences that monitor the existence or non-existence of the organization and the independent judicial structure of the investigating authority [10].

D) Guarantees related to the right of defense

Although there is no explicit reference to the rights related to defense in paragraph 1 of Article 6; But by referring to the phrase, the European Court has identified the general principles and rules related to the right of defense. Among these principles, we can refer to the principle of equality of defense possibilities, the principle of opposition or two-sidedness of defense, the principle of the need for the decision of the investigating authority to be substantiated, and the right to information and access to the contents and documents of the case. In fact, without observing the mentioned cases during the proceedings, there is no possibility of effective defense by the parties, and therefore fairness in the proceedings will not be accepted. As two important examples regarding non-observance of the principle of equality of defense and non-observance of the principle of opposition in defense, we can mention the role of the public prosecutor in criminal lawsuits and the government commissioner in administrative lawsuits. In criminal lawsuits, the judicial procedure of the court regarding the role of the prosecutor's judges in the proceedings in a gradual process, over more than 25 years and in three stages, has moved towards considering the role of these judges to be inconsistent with the rights of defense and in fact with independence and impartiality in the proceedings [11].

Guarantees exclusive to criminal proceedings

The guarantees of a fair trial stage can be put forward as follows:

A) The right to public proceedings

Publicity of the trials is one of the important guarantees for the realization of judicial security. This means that people should be able to attend hearings so that the functioning of the judicial system is under the direct supervision of public opinion and is protected from the tendency to deviate. Also, historical experience has shown that secret trials in courts lead to violation of the rights of individuals. According to Article 165 of the Constitution: "trials are held in public and the presence of people is unhindered, unless the court deems that it is open to public decency or public order, or in private lawsuits, the litigants request that the trial not be held in public." Public proceedings are considered as one of the important guarantees of the defense rights of the accused. Because when the hearing of his accusation is held in front of the public, he no

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longer sees himself alone and powerless in front of the judicial authority, and he is confident that the judge will not abuse his government power due to the fear of public supervision and judgment. The impossibility of removing this right from the accused is due to the fact that a public hearing is not only a right but also an obligation for him. Because he has a duty to the society not to commit a crime, and when he commits a crime, the people have the right to supervise the way he is tried. On the other hand, the government wants to guarantee the health of the judicial system attributed to it by holding the trial in public [12]. Also, this principle, in addition to guaranteeing the rights of the accused, also provides the interests of the society. The occurrence of any crime harms the order and security of the society. So, in order to heal the wound on the public conscience, it is necessary to hold a trial that disrupts the order of the society in front of the citizens. In fact, the presence of people in hearings makes it possible for them to supervise the correct implementation of justice [13].

B) Observance of the reasonable deadline for consideration

Like what was said about the right of access to the court, in order to be effective in other elements related to the right to a fair trial, in this case also, failure to observe this right will make the result of the trial ineffective at the right time. The complexity of the legal systems or the technicality of some lawsuits, the lack of proper and proper organization of the judiciary, the need for the involvement of multiple judicial or administrative authorities in the proceedings, and the lack of appropriate specialized staff (quantitatively and qualitatively), can be counted among the factors that cause the process to slow down. Even in European countries that are members of the convention, this problem exists to a significant extent. Many of the opinions of the Commission and the European Court of Human Rights in the area of Article 6 and the condemnation of the member states related to the non-observance of this deadline have been reasonable. For example, in some lawsuits, the period of handling the case was between 10 and 15 years. Accordingly, in Article 6 of the Convention, it has been specified that a reasonable deadline should be observed in handling the claim. But what is the amount of this logical deadline and on what basis is it determined? In other words, what is the criterion of rationality or irrationality of the deadline? In response to this question, the court in its opinion has mentioned criteria such as the degree of complexity or simplicity of the claim, the importance of time for the claimant in obtaining a decision, the behavior of the claimant and the way the case is dealt with by competent authorities and courts [14].

C) The right to remain silent

The accused's right to remain silent during the investigation and trial comes from the assumption of innocence and preventing him from being forced to confess or testify against himself. Legal authorities always try to take it away from the accused in any possible way because it makes their efforts fruitless. Many national legal systems accept the right to remain silent, although human rights treaties do not explicitly mention it, but the European Convention implicitly accepts it. The right to silence has not been explicitly considered in the International Covenant on Civil and Political Rights as a general and international legislative document. But at first, the question arises whether governments can oblige the accused to answer questions in the criminal process? Does this mean that silence can be interpreted to the detriment of the accused and that it is a proof of stigmatized guilt? In order to answer these questions and understand the obligations of governments based on international documents, attention should be paid to other rights provided

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in this covenant. According to paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights, "No person shall be forced to testify or confess against himself". When it comes to accepting the principle of acquittal, the result is that a person is recognized as an accused and not a criminal. One of the consequences of this identification is that during interrogation, he can declare that he has used his right to remain silent and will not speak without the presence of a lawyer. This right is one of the rights recognized for the accused in the stage of crime discovery and in the preliminary investigation stage, we must differentiate between the declaration of this right in the stage of crime discovery and the right to benefit from it in the stage of preliminary investigation [15].

D) The right to have a lawyer and an interpreter

The principles of fair proceedings of the international human rights system considers the right to have a lawyer as one of the fair principles for proceedings, which is recognized in the Universal Declaration of Human Rights and the Charter of Civil and Political Rights and the Constitution of the Convention on the Rights of the Child. The Covenant of Civil and Political Rights, the American Convention, the European Convention do not explicitly mention that a person has the right to the assistance of a lawyer in the pre-trial stages. But the Human Rights Committee and the European Court of Human Rights clearly state that the right to a fair trial requires access to a lawyer during detention, interrogation and preliminary investigations. The Human Rights Committee mandates that all persons arrested must have immediate access to a lawyer. Clause 2 of Article 17 of the basic principles regarding lawyers: If the arrested person has not chosen a lawyer of his own choice, he should be given the right to have a judicial official or another official choose a legal lawyer for him in all cases that justice requires. If he does not have the financial ability to pay the lawyer's fee, a lawyer should be appointed for him.

Also, Article 6 of the Basic Principles on the Role of Lawyers stipulates that any person who is arrested, detained or accused and does not have a lawyer should be given the right to have a lawyer competent and appropriate to the crime in all cases where justice requires. If he does not have the financial ability, a lawyer should be appointed for him. Article 7 of the basic principles regarding lawyers stipulates that access to a lawyer must be possible immediately after the arrest of the accused. Delay in accessing a lawyer should be allowed only in exceptional circumstances provided by law. Article 8 of the basic principles in the role of lawyers' states that all persons who are arrested or detained must be given the necessary opportunity, time and facilities to consult with their lawyer without any delay and with full confidence. Although Article 6 of the European Convention does not explicitly mention the right of the accused to consult with a lawyer, the European Convention stipulates that since consulting with a lawyer is the main part of preparing the accused's defense, this article implicitly recognizes this right for the accused. Article 22 of the set of basic principles requires governments to respect the relationship between clients and their lawyers, which is based on trust, and to treat them with respect. And according to paragraph 5 of article 18 of the set of principles, these relationships cannot be used as evidence against the accused [16].

E) Prohibition of torture to obtain a confession

Today, in the legal systems of many countries, the right not to be exposed to disproportionate punishment is considered one of the fundamental principles of citizenship rights in the realm of criminal law. This right, which comes directly from the inherent dignity of human beings, has been recognized in many international, regional and global documents. At the international and regional level, Article 5 of the Universal

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Declaration of Human Rights, Article 7 of the International Convention on Civil and Political Rights, Articles 2 and 4 of the International Convention for the Prohibition of Torture and Cruel, Inhuman and Cruel Treatment and Punishment, Article 5 of the American Convention on Human Rights, Article 3 of the European Convention on Human Rights, Article 5 of the African Charter of Human Rights, Article 49 of the Charter of Fundamental Rights of the European Union, have explicitly or implicitly emphasized the principle of proportionality of crime and punishment and the prohibition of disproportionate punishment. The provision of such regulations in the international human rights system actually indicates that today the era of absolute and exclusive criminal rule of governments in criminalization, determination of punishment and prosecution, trial and punishment of citizens has ended [17]. Article 5 of the Universal Declaration of Human Rights: "Torture, punishment and cruel and inhuman acts against any human being are not permissible".

Article 7 of the Covenant of Civil and Political Rights: "Torture, punishment and cruel and inhuman acts against any human being are not permissible. Also, scientific and medical experiments are not allowed on any person without his consent.

Principle 6 of the set of basic principles regarding lawyers: "Torture and cruel and inhuman acts against any person are not permissible and such acts cannot be justified under any circumstances."

F) Equal status of the prosecutor and the accused in criminal proceedings

In the modern judicial system, maintaining equality between the litigants is not only the responsibility of the investigating authority, but the legislator is also obliged to provide laws in such a way as to ensure equality between the rights of the litigants in creating a fair trial. So that effective steps can be taken to restore public rights and ideals of justice by creating a fair trial [18]. The prosecutor acts on behalf of the society in the capacity of discovering the crime, gathering evidence, and pursuing and arresting the accused. And his punishment in terms of the general aspect of the crime is to maintain the social system, he requests the punishment of the criminal, the prevention of the crime in the future, or the relief and satisfaction of the victim of the crime from the court. On the other hand, the accused should be able to defend himself against this accusation by the prosecuting authority by freely using all legal means and methods [19]. In the criminal proceedings, the prosecuting authority has the authority and support of government organizations and groups under his command, including the police, experts and other protections that he enjoys. The principle of equality of arms requires the protection of the accused against the prosecuting authorities. Protections such as the right to have a defense lawyer in all stages of the trial, the right to summon witnesses and question witnesses, the right to have adequate and reasonable preparations and time to prepare a defense, the right to have an interpreter guarantee the principle of equality. The principle of equality of arms has a long history. From the point of view of western jurists and philosophers, the equality of weapons is considered one of the principles of natural rights in the process of investigation due to the inseparable relationship between equality, justice and the rule of law. The concept of equality of arms has a historical background in such a way that in the Middle Ages, the parties to a duel or legal battle had to use similar pistols or swords in order to comply with the principle of fairness [20]. In Iran's criminal laws, this principle was not explicitly foreseen by the Iranian legislature, and the decisions of the Supreme Court and Iranian courts did not pay attention to it either. By examining the criminal law of Iran, it can be seen that some of its special cases, especially

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regarding the right to have a lawyer, the presumption of innocence, and the right to remain silent, although partially, are regulated on the basis of guaranteeing compliance with this principle. Perhaps it can be said that in Iran's legal system, in order to create equality of arms, the most important example of the said principle is the recognition and the right to have a lawyer in the preliminary investigation stage [21].

CONCLUSION

The implementation of justice and equality is the ultimate goal of every proceeding, because every government shows its attention and perspective to their rights and needs with its attitude and legislation in relation to its nation. One of the most important of these rights is to have a fair trial. Fair trial is actually a guarantee for people of human society against power. Throughout history, sometimes they have treated the accused like a criminal, and sometimes they have treated the condemned in a way that preferred death. In order to prevent the arbitrariness of some institutions and their encroachment on the individual and social rights and freedoms of the people, the proceedings in special and administrative courts should be conducted in accordance with the principles and procedures of fair proceedings. Also, the votes and decisions of these authorities must be appealable in the competent judicial courts without any restrictions and obstacles. Everyone's enjoyment of a fair trial means that every person whose rights have been violated has the right to seek redress in a competent court. On the other hand, every person who is accused must be able to defend himself in an impartial and independent court. The important right to enjoy a fair trial is mentioned in a wide range of human rights declarations and international conventions related to civil and political rights.

Also, paragraph (b) of Article 19 of the Islamic Declaration of Human Rights, known as the Cairo Declaration, approved in 1411 AH, states: "...appeal and seeking refuge in the court is a right that is guaranteed to everyone..." And also, in paragraph "e" of the same article it is said: "The accused is innocent until his conviction is proven through a fair trial where all guarantees are provided for his defense". In addition, the Covenant of Civil and Political Rights approved in 1966 has emphasized in its Article 14: "Everyone is equal before the courts and tribunals of justice." Everyone has the right to have his lawsuit fairly and publicly heard in a competent, independent and impartial court, according to the law, and that court to make a decision about the validity of his criminal charges or disputes about the rights and requirements of civil affairs. For example, the principles 32, 34 to 39 of the Constitution of the Islamic Republic of Iran have paid attention to the said right and stated its general principles in the most complete way possible. The ordinary laws of the Islamic Republic of Iran have also taken very positive steps in order to implement this right and the principles of benefiting from a fair trial, and in turn have provided interesting rules to block the way of any kind of legal and practical encroachment on the aforementioned right. In fact, the judicial authorities of the countries should be developed enough to be ready to deal with any legal and criminal case as soon as possible. On the one hand, one should pay attention to the principles related to the organization and human resources of the investigating courts, and on the other hand, the principles related to guaranteeing the rights of litigants, especially the accused, should be kept in mind. Today, the theory of restorative justice, relying on the principle of equality of rights and society's acceptance as a key element, has been able to take an effective step towards the realization of fair proceedings. This school seems to have the most in common with what we have referred to as fair trial.

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ETHICAL CONSIDERATIONS

Ethical issues (such as plagiarism, conscious satisfaction,misleading, making and or forging data, publishing or sending to two places, redundancy and etc.) have been fully considered by the writers.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interests.

REFERENCES

1. Majidi SM. Differential procedure for crimes against security in the criminal policy of Iran and France. Religion and Communication 2005; 28: 1-10. (In Persian).
2. Malek Mohammadi S, Ghamami M, Mohseny H. The role of ethics in the development of arbitration clauses towards third parties in Iran. Int. J. Ethics Soc 2023; 4 (4) :1-6. Doi: 10.52547/ijethics.4.4.1
3. Fallahi F, Ramezani A, Fallahi A, Mazlum Rahni A. Analysis of science and knowledge from the perspective of evidence to prove criminal cases; Philosophical-ethical study. Int. J. Ethics Soc 2021; 3 (2) :27-35. Doi: 10.52547/ijethics.3.2.27
4. Tajik A, Khoeini G, Khazaei A, Shafiei H. The role of ethics in civil liability focusing on the principles of carrier's civil liability (A philosophical-ethical study). Int. J. Ethics Soc 2021; 3 (2) :16-26. Doi: http://dx.doi.org/10.52547/ijethics.3.2.16
5. yavari A. The right to a fair hearing and a new hearing. *Basic Rights*, 2004; 1(2): 253-290
6. Tavajohi A, Dehghani A. The conflict between security-oriented approach and fair trial rules. *Journal of Criminal Law Research*, 2013; 1(3): 7-34
7. Elsan M. Offences against trade secrets. *Law Quarterly*, 2008; *38*(4): 1-23. (In Persian). Dor: 20.1001.1.25885618.1387.38.4.1.4
8. Shamlu B, Moradi M. Restrictions against fair trial guarantees in the light of Security- oriented approach to money laundering. *The Judiciarys Law Journal*, 2013; 77(81): 111-159. doi: 10.22106/jlj.2013.10976
9. Kashani SM. International standards of justice. 1st ed, Tehran: Mizan Publication, 2004. (In Persian).
10. Yavari A. Compliance with the principle of acquittal in quasi-criminal proceedings in France in the light of the European Convention on Human Rights. *Legal Research Quarterly*, 2009; 12(49). (In Persian).
11. Naji M. Impartiality in criminal proceedings. The Judiciary Law Journal, 2006; 70(56-57): 29-78. (In Persian). Doi: 10.22106/jlj.2006.11438
12. Khandani V, Amerinia M, Karimi G. The principle of public proceedings in Iranian law, Islamic jurisprudence and English law. Journal of Islamic Jurisprudence and Law Research, 2021; 17(65): 116-136. (In Persian). Doi: 10.22034/ijrj.2021.687045
13. Mahmoodi P. Violations of the principle of innocence. [M.A. thesis]. Islamic Azad University, Arak. (In Persian).
14. Hasanzadeh M. Bringing ancillary actions outside the time-limit. *Private Law Research*, 2013; *2*(4), 39-62.
15. Tavajjohi A, mohammad kourepaz H. The typology of restrictions on the right to access to counsel in security offenses with emphasis on pre-trial stage: comparative study. *Journal of Criminal Law Research*, 2019; 7(27): 75-108. doi: https://doi.org/10.22054/jclr.2018.30544.1641
16. Beigi A, Beigi H. The position of the principle of equality of weapons and its effects in the criminal procedure law of 2012. National Conference of the Criminal Procedure Law of 2012 in Critique. 2013.
17. Rahiminezhad E, Habibzadeh M. Disproportionate punishments as human dignity violating punishments. *Law Quarterly*, 2008; 38(2). (In Persian). Dor: 20.1001.1.25885618.1387.38.2.6.5
18. Naseri Karimvand A, Taherinasab SY, Shokrchizadeh M. Fair trial at the initial stage, criteria and guarantees of implementation. International Legal Research, 2020; 13(50): 119-139. (In Persian). Doi: 10.30495/alr.2021.681587
19. Goldoozian I. Evidence to prove the claim. 1st ed, Tehran: Mizan Publication. (In Persian). 2010.
20. Akhondi M. Code of criminal procedure. 2nd ed, Tehran: Printing and Publishing Organization of the Ministry of Culture and Islamic Guidance. (In Persian). 2013.
21. Saghian MM. The principle of equality of weapons in the criminal process with reference to French and Iranian laws. The Judiciary Law Journal, 2006; 70(56-57): 79-110. (In Persian). Doi: 10.22106/jlj.2006.11439.

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