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JUDICIAL REVIEW OF THE CODE OF CRIMINAL PROCEDURE 1392

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Abstract

The study compared the approach to protect the rights of the accused in the surveillance with previous decisions, the official release of its founding in the monitoring and regulatory purposes, as well as monitoring the rights of the accused and the impact of the guarantees paid plaintiff. Observe the principle of proportionality take place, as well as the establishment of new arrangements to reduce processing time, control and protection of the rights of the accused and the complainant is better supervision and guarantees for the accused and the complainant is also provided. According to Article 247, the principle of complementarity, "the judicial supervision" and should be provided with arrangements, to be issued under Article 217 and under Article 254, if they are charged with monitoring the implementation of the infringement, the cancellation and the security monitoring intensified but on the basis of Article 247 Clause, "the independent monitoring," which is predicted. Note also states: "In crimes of imprisonment of seven and eight (Article 19 of the Penal Code Act 92) and provide a guarantee for damages, the judicial authority can only issue a limited judicial supervision" and in case of violation accused of running an independent monitor, has been converted to an appropriate provider.

Keywords: Security Arrangements, Criminal, Judicial Supervision, Rights of the Accused

Introduction:

With the judicial decision of a competent judicial authority, which (the investigator, prosecutor to prosecutor said the new law) in the process of preliminary investigation and investigation and also, in some cases, court proceedings and trial issued. The decision to fit, refer to the accused, as other persons or property. In the preliminary investigation, the principle of freedom and lack of restrictions and bans for the accused that his guilt has not been established yet, is the (presumption of innocence). The competent authority in accordance with the principle of proportionality, the importance of the crime committed, the reasons and causes the charge, the possibility of escape of the accused, the

elimination of the effects of crime, health and personality of the accused and, after the presence of the accused and the charges against him (apart from the supply of leaving the country), they will be issued. The arrangements provide for criminal is considered one of the arrangements numbers to complete the preliminary investigation, collecting evidence and preparing the criminal proceedings and also in the possession of the accused, on the assumption that his next appearance of the accused and access to necessary, be issued.

The new law enacted in 93 Code of Criminal Procedure, in Chapter VII, the number of criminal supply arrangements has increased to ten. Under Article 217 of the new law, legislators addition to the above five cases (a commitment to leaving the jurisdiction of parole), (obligation not to leave the jurisdiction by determining the penalty clause), ((obligation to introduce intermission judicial or police their weekly or monthly to determine the penalty clause), (commitment to the employees of the state or the armed forces by determining the penalty clause) and (obligation to not leave home or place of residence determined by the agreements charged with determining mood by monitoring electronic equipment), has counted also on the list of criminal security arrangements.

But under the new law, the legislative approach is far better than the previous law, and in order to preserve the rights of the accused and his full freedom in the preliminary investigation stage, the new facility as (by judicial review) under Article 247, the following is stated in Chapter VII . Judicial appointments, but in some instances it has not been seen in our laws (Orders of supervision) as well as security arrangements criminal defendant freedom limits but limitations issue of judicial appointments, lesser and included some employment restrictions, bans the use of community facilities, traffic restrictions, etc., and the competent authority after the issuance of monitoring compliance with the obligations of the subject from the defendant monitors.

The new law stipulates Article 250, the issuance ((the judicial review)) as well as the issuance of orders to provide reasonable and justified and criminal must be in compliance with the principle of proportionality. Note that material provided on the basis of the certificate would be disproportionate judicial official who cause disciplinary conviction.

According to the preamble of the Article 247, the principle of complementarity ((the judicial review)) and must provide the dates in Article 217 to be issued. And in accordance with Article 254 Q.d.k 92 if he violates the implementation of the monitoring, the supervision of cancellation and exacerbated supply. But according to the provisions of Article 247 a, ((the independent monitor)) also have been predicted.

Note these states: ((Crimes sentenced in grade seven and eight (Article 19 of the Penal Code Act 92) and provide a guarantee for damages, the judicial authorities can only rely on the judicial review)) and in If violations are accused

of carrying out independent monitoring, are put in place appropriate security becomes. While the above article, open inquiry can be monitored for a period of time determined by application of the defendant (a license) or defendant who has a weapons permit or ban the export of Czech (if they are related to crime) impose restrictions.

Note that the ban on leaving the country, as the new law on the judicial review that the alleged restrictions on freedom of movement and traffic for a certain time is six months. New Criminal Procedure Code to protect the rights of the accused during the preliminary investigation on several occasions emphasized that the establishment of the criminal and judicial supervision of security arrangements such as those in this study and comparison of the new facility "the supervision» with criminal supply appointments impact the rights of the accused under the new Criminal Procedure Code will be discussed.

The judicial control

Judicial decisions in line with the arrangements provided individual legislator is considered criminal (Assyrian, 1392: 288), is establishing a new legal. The judicial review must be reasonable and justified (Article 255). The principle of proportionality in the case of judicial appointments should be followed. (Ibid: 290), but the sanction non-compliance with the principle of proportionality - laid down in Article 250 - is limited to the criminal provision does not apply in the case of judicial supervision.

(Article 217). Transmissions judicial supervision alone do not apply and should be used with criminal security arrangements (Additional aspects and supply arrangements within criminal), but the crime was sentenced to grade seven and eight the possibility of judicial review is to be applied without penal provision There. (Clause 1 of Article 247). Is objectionable judicial appointments (if the court issued by the competent court and if the court of appeal) (Clause 2, Article 247). Monitoring compliance with the instructions provided in the event of conviction, the court may relieve him of his punishment (Article 253). Regulatory non-compliance with the instructions provided in accordance with Article 254 "When accused of carrying out the judicial review that the security has been issued with a violation, and the cancellation and the security surveillance, the escalation of the If violations are accused of carrying out independent monitoring, the issue becomes proportional to the supply. During the judicial review provisions of this article on the defendant is charged. " Judicial supervision were put into temporary Bazasht (Article 254).

Appointments of judicial supervision

Appointments of judicial supervision include:

A- Nubian introduced to centers or institutions established by the magistrate.

B - Non-driving a motor vehicle.

C- Prohibition of employment in activities related to crime.

D - A ban on the possession of weapons licensed (in accordance with Article 249 in case of maintenance Slahdaray ban issuance of licenses, permits of weapons and acquisition and possession of weapons delivered to one of the authorized locations, and the investigator shall with reference to the license issuer).

E- ban on leaving the country (in accordance with Article 248.k, the validity of the ban on leaving the country for six months and is renewable. In the event that the exit ban expires the period stipulated in the order, the order on their own ruled that the relevant authorities can not be prevented from leaving).

Monitoring hedge appointments

Article 1 - the implementation of the general policies of the Judiciary (adopted by the Supreme Leader) based on minimal use of arrest and detention of persons, judges at the time of issuance except in urgent cases or cases provided by law are required to issuance of the arrest, Other appointments to ensure appropriate use. Prosecutors and their assistants, as confirmed above legal requirements required to review and consider the effects and impacts of arrests, particularly for youth and adolescents are.

Article 2 - Due to the large number of defendants on bail or bail are detained, it is necessary:

A) issuance of providing as much as possible done in a way to charge or bail bondsman will have ample opportunity to present.

B) Prosecutors accused the context of notification of relatives to provide surety or bail.

C) if introduced or bail bondsman (at office hours or outside working hours) and the availability of palatable supply arrangements, to accuse prosecutors not to prison.

D) the inability of introducing people to the bail bondsman or are in prison, accused prison authorities by informing his family to provide the security deposit.

E) According to Article 132 of the Criminal Procedure Public and Revolutionary Courts in Criminal Matters (ratified in 1378 parliament) in cases where the accused person bail introduction, the exporter should not judge accused of accepting cash collateral or because the collateral property to another person (other than the accused), the refuse.

And) prosecutors and heads of district prosecutors are required to verify the implementation of this matter will be closely monitored.

Article 3 - Dadgstryha arrangements with the heads of the official experts and representatives of legal entities established in the Land Registry or through an online electronic system of online communication, so if you need to arrest or identification or verification of collateral property to quickly perform the send defendants to prison will be reduced.

Article 4 - The Attorneys General of cities on all orders should lead to the arrest by prosecutors and appropriate monitoring arrangements and admission arrangements disproportionate Tamynhay introduced due to the issuance or refusal to provide timely, led to the imprisonment of not be Daily Statistics detainees prosecutors review and issue the necessary directives.

Article 5 - Public prosecutors and revolution by providing leadership and supervision over enforcement, ensure that law enforcement plans leading to the arrest of a group of people, before the jurisdictions provided to officials and with training and coordination for , applied to its negative consequences at the hearing and called for the accused to prison will be reduced.

Note: Attorney General with the issue at meetings foreseen in Article 28 of the Directive, provides the necessary measures to implement this article.

Article 6 - According to the amendment of Articles 15 and 16 of the law on combating drugs, drug addiction and treatment centers and accommodation should be kept mandatory drug and the absence of such centers, warrant for arrest and introduce these people to prison is not . The prosecutors precision and care that:
First: From addicts except in circumstances prescribed by law, under no circumstances should be in prison.

Second, change the title of addiction to narcotics to addicts, warrants and will be introducing people to prison.

Article 7 - the crime of driving offenses, car accident if you have insurance, the judges of the Article 21 of the Law amending the law on compulsory insurance of civil liability of owners of motor vehicles against third-party land (approved 16/04/87 Parliament Islamic), to accept as collateral policy and action in conformity with Articles 5 and 6 of the law the execution of a court order compensation to be received by the insurance company. If the vehicle without valid insurance policy (as well as other conditions stipulated in Article 10 of the law), the court money through fund provided physical damage

Principles and values of the rights of the accused from the perspective of judicial supervision

Social values as the top issue in the community that might make it excellent, but it is impossible to deny, in all societies of special sanctity, perhaps one of the most important criteria in assessing this issue, moral society. The

conscience of the masses and the majority of the criteria for the diagnosis and maintain high ethical principles and leadership in community leadership she accepted is not the model of moral and pious manner that reflects their conscience against all beliefs, needs and traditions Yes (Katouzian, 1386: 560).

Location of the ethics of the law, such as the position of blood in the body, as well as the body's blood supply, without the appearance of man turns out to be the legal system in the same manner of feeding behavior. Rights, in addition to the fact that the moral and social habits, there is a tendency towards ethics and best described as Islamic ornament adorned (Katouzian, 1388: 56).

Identify and explain the values of justice, we must cross the social morality, ethics, best step toward alia. Dominant values in society, which showed favorable attitudes toward judicial duty is a manifestation of social values that is worthy of the highest morality must be measured by the benchmark. The values on the other hand, the basis for identifying behavior is consistent with the dignity and the rule of law, some of which are reflected and scattered in fact indicates the need to act on it, on the basis of the law and others recognized in law it is not necessary to act on the basis of judicial practice and procedure. The second criterion values with "the highest morality" must be identified and systematically.

Developments and changes in the law on the protection of rights of the accused from the perspective of sociology of law From the perspective of sociology, law and legislative changes on the protection of rights of the accused, rather than being an abstract, it is abstract, something concrete that can be studied along with other Social Affairs (Razzaghi, 1390: 112) without not to Henri Lévy-Bruhl sociologist who has paid much attention to issues of sociology of law, believes that "the law is the most social of the social nature of religion and language and art shows potential social groups (Levy Bruhl, 1391: 45).

Judicial rules mirror the desires and aspirations of the country and relations between social forces. That is why the "norm" in the determination of the sources of law is crucial; Because although the social origin and the behavioral norms and normative every community is determined, but is now the norm in terms of legal issues, a fundamental resource in the formulation of laws and regulations is legal. As with other aspects of human social life, from the very beginning with the phenomena of society, especially combined with rituals and traditions and customs, and this is the "norm" in spite of other legal sources, such as legislation, conventions and agreements , has played a significant role in the formation and development rights (Seyed Fatemi, 1382: 82). Some sociologists believe that the rights of the accused is subject to a condition that is predetermined and imposed on the activities of individuals and groups. That's

why the "element of compulsion" in the legal relations readout Nmvd.dydgah some sociologists that the rights of individuals and their rights are essentially changes to the law on a priority basis with other aspects of social life and it can not correlated As often still apply separately from other Social Affairs reviewed the studies show that the law is integrated with other forms of social activity and as Emile Durkheim noted, law, social cohesion is a visible symbol (firm, 1390: 21).

From the perspective of sociology, social rights within a certain effort to establish justice, by establishing links and coherence among multilateral demands and obligations that the credibility of the rules and norms that these rules, the sanction of social behavior in These guarantee your community can be effective, especially when the rules of social structures of society (the Knights, 1388: 172) when this involves organizational structures in your balance is usually paid external force Accompanied; But this is not required.

At the end of this article to explain the duties of sociology at the rights of individuals has been (Hashemi, 1387: 94):

1-sociological analysis of social reality integrity of offers, the first step to determine the types of laws, regulations and legal devices that operate in specific social fields, pays its relationship with the social fields, in terms of content and form, to conduct their recall rights Rsand.brssy social reality on the basis of actual social behavior, whether or not the foundation, whether organized or not, whether organized or not, on the basis of their morphology If you are Gyrd.ba attention to patterns, rules, symbols, and also take into account the beliefs and values of justice; Set on the basis of rules and judicial experience that it recognizes, based on the people's rights Ast.nchh, recognition of their rights in terms of its intrinsic properties.

2. The significance of changes in the hierarchy of social rules and trappings of civilization. This is even more to the judicial and legal system, according to social infrastructure, is concerned. In this particular work, sociology of law and the norms of the legal rules regarding social infrastructure and social infrastructure works is to study law.

3. Check practices Mstmrsazy changes in the function of the rule of law, sociology tries, the rule of law which led to the rights of the people, the study.

4. The Role of variables in real life and social life of the popular classes lawyer groups, the government, religious organizations, financial institutions, Sndykah and so on. In this function, Qanvn-Gzaran pays to study sociology.

Judges, lawyers, lawyers, and those that make up the legal academic community Answer, studied sociology

Darnd.jamh explanation of how to respect the legal structures of society and the overt and covert use of sociology to

the role and functions of the law can lead to the development of safer and more secure society to protect the rights and freedoms of the people.

Law can be enforced in the community and lead people towards preserving civil liberties within the context of the values and norms of society, is emerging. Even the law enforcement structures and foundations supporting the law depends on the community; Because if the law arising from the customs, values and norms of society, then it becomes heavy legal costs of implementation and monitoring. Although the government has a central role in the production and reproduction of "rules", but "culture" of the values, norms and social patterns, it can be beneficial or harmful in the official rules and regulations, effective. In the triangle, society and the state, the interaction between these three, the reproduction of social order and cohesion. It can be constitutive of social life, social cohesion and economic growth and prosperity - political and, in a word "development" brought. "Development" only in the light of social harmony and consensus is implemented and the social consensus that society can not achieve the desired goals and ideas.

The goals established in the Code of Criminal Procedure 1392 judicial supervision

The purpose of judicial review is accused of giving maximum freedom to be consistent with the need to uncover the truth and preserve public order. He is accused under judicial supervision in traffic, in your social life, some will tolerate restrictions and monitoring compliance with the obligations that will be imposed on him (Agriculture, 1392: 149). Work related to judicial control are sometimes accused of the freedom of movement that are applied to prevent the accused from escaping and sometimes these tasks in order to ensure the presence of the accused when summoned by any authority or person that the magistrate or the judge of freedoms and arrested Slahyt→Dary set the actions are. In addition Mashrthayy assignments related to the accused can be placed in this category. Judicial control measures and requirements with the support of the accused and his rehabilitation and protection of society and the victims of crime, are applied (ibid: 152).

The general rule is that the defendants during the preliminary investigation are completely free and only in cases envisaged by the law limited. So the investigator based on the rule deals with the issue of judicial appointments. Judicial control arrangements have different forms and in all of the obligations and duties imposed on the accused. The investigator should determine assignments for individual and group common to all defendants under no obligation does not exist. And also the prosecutor in accordance with "the principle of legality of crime and punishment" can only be defined in law obligations to impose charges (born healthy and part Ahari, 1393: 213).

Accordingly, in Article 218 Q.d.k 92, for multiple charges, the accused, the supply unit will be issued, unless the crimes committed in the jurisdiction of the various courts have inherent jurisdiction of any court in this case for charges, the provision of appropriate and independently issued. The new Law of Criminal Procedure, the approach is far better than the previous legislation, and in order to preserve the rights of the accused and his full freedom in the preliminary investigation, it was established. These arrangements provide for such criminal defendant freedom limits, but the limits of judicial review on the lesser and included some employment restrictions, bans the use of community facilities, traffic restrictions and so on.

The competent authority after the issuance of the regulation on the issue of the defendant's compliance obligations, controls. The fundamental difference between criminal provision in the new law by judicial decisions is based on a new law providing for access arrangements to prevent the escape of the accused and the accused are issued while the accused is issued in order to improve judicial oversight. Also guarantee the rights of the victim as well as the common goal of both security and criminal surveillance set (Walid Saleh, 1392: 162).

Conclusion

Judicial appointments is a new facility to improve and ensure the rights of the victim and prevent crime is judicial appointments in the security arrangements can be used to provide part of the arrangements to take into account and prevention side of. The drafters of the bill by establishing judicial supervision actually wanted to meet the goals of the issuance has been completed. Such as prohibition of the possession of arms licensed, ban on Czech about Czech and other crimes related to the other accused involved in the reform because the banned occupations with the field of crime and action in the treatment of Behavioral and Mental Disorders closer, quit associating with certain people. So not only guarantees the rights of the victim but the accused involved in reforming the overall magistrate issued such an appointment in order to prevent crime has moved.

In general, the effects of restorative justice are the judicial oversight arrangements that provide legislators with criminal decisions is anticipated judicial appointments are anticipated to ta'zir or punishment a person the. And in Article 247 of the Code of Criminal Procedure stated that appointments can be said that this was a sort of supplement in order to complete the financing arrangements impact and prevent re-offending is. Judicial oversight arrangements provided not only with appointments, but each also has retractable and can be multiple.

And all judicial appointments objectionable by the magistrate if these are to be exported, the competent court to deal with the objection, the court referred to in Article 271 and if the court, the appeals, the appellate court. In fact, the

new law by placing this was not only able to control and monitor most of the accused are currently free but charged with preparing the grounds of self-defense as the release of the victim freedom of action, and the possibility of the reasons alleged show The faster you finish the proceedings, as well as judicial errors is reduced as a result of the framers of the bill to ensure the rights of the victim's rights in compliance with international instruments have adapted the presumption of innocence.

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