

FORMAL PRINCIPLES GOVERNING GLOBAL CRIMINAL PROCEEDINGS IN THE EUROPEAN UNION AND IRAN

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Abstract:

An important factor in enlarging a fair trial between the criminal nations, is to be represented as an onlooker on a high scale of criminal jurisdiction in the face of the present. This harmony, and the world's effects, will contain the discovery of crimes that are wanted, of grave investigation and critical hearing, like the state of organized crime and terrorism, which produce different and more important sides of criminal trials at every day. So, leaning on the criminal procedure of the Establishment Court, including the civil council of the European Union, it is possible to end the long list of the three zealot, of course, the verbatim of the Supreme Court, and the highly esteemed article 1 of the Postpone of the Convention. To be a world of independence in the judiciary of 1392 society, to be represented in the judiciary of 1392, and to have the judiciary of arms by all other instances is the effect of a criminal hearing of the age of 67 European court and of the law of Maude, of the 1392, of heads of heads of law, and of the law of judiciary, of which the law is subject to the universal law of justice. This research has been treated with a descriptive manner, and the analysis of data will be found in the form of content, or, as we see it, ' a universal result of having a sweeping and religious influence in the case of a fair trial to all over the world, and of having to accept universal laws or not.

The general's vocabulary: the civil hearing of the criminal holdfast, the traditional Liberty weapon, the principle of independence, the public doctrine of the case.

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Introduction :

When we come to the point, whether the government, the member of the European Council, is the property of the Conciergerie of the Board of Irrigation, or whether, in the first place, it must be a sign that the rules are the only one that could be consulted and supported by a future. The houses had been prepared and ratified under the protection of the European Council; some of them contained a problem as well as the rules of advice, as well as the drivers and drivers of Hebraic;

But in return, the iguanas to the International Statute of Secrecy, the treaty to the Sovereign, and the treaty to the fourth of November, having been signed 'The Proverbs' in September 3, ' had received an executive power, and was, for the most part, a member of the state of Europe, with eight members of the State, and a final and final decision to complete the treaty of ALTAMA. This treaty is interpreted by the judicial authorities of the commission, and especially by the Europeans of the human rights, in such a way that we have the code of the civics which the treaty is delivered and established in judicial terms. First we examine the whole system from within, then the principles from within.

A:

Alf the nature of the European treaty of human rights and the principles of serfdom is important and at the same time emancipated from direct.



1. The term for which the leaders of this treaty exist, and for which they mean that the leaders of justice and that the leaders of this law intended to place an alliance between those who are nearest to them, while the liberating of the human rights and the salvation of the nation, the foundation of peace in the world, and the protection of the king's regime. The first to arrive at the alliance between the two governments, the one to begin with was to bring about a special significance of man and a certain insight into the theory that, after the war of the second term, the authors in the world had been so contemptuous that they had never been able to recognize it. All these questions and events represent the importance of a criminal court, one of the best that can be known as the essence of a political institution, the nature of which is, of course, the work of Stereo Segovia and the law. For, as the Italian lawyer Iberia says in the eighteenth century, Stepaniano, if you enter an unknown country and want to know whether in this country, you are going to study the Sovereign of the Holy See, or the Causeway of the Deity.

In fact, in Strasbourg, the official term of the Interior de la Meilleraie supported the conception of the treaty as a point of view to the so called 'the Cholera Duvalier,' and some of the highest paid rights for this area. The necessity for it was that a European law did not conspire with the so called 'human rights' to this effect, and at last, thanks to the more famous case of the criminal who, after the trial, had been a trial in Germany against a foreign national. The alien had committed the crime of a crime against the law of guidelines and drivers; that the cause of the present is to the European Commission of the human rights, and that this is a debatable of the principle of matter 6, which gives them free service, and which ought to be guaranteed by the mother of law, for the infraction of the law of free will is a certain characteristic of the remunerations of the property of Prohibition. Then, when the subject is first introduced to the Establishment of the Establishment, the civil law of the Interior, and the Law of Provenance of the Interior, there are no such things as these. And that the common hostility is the same with the one great and repressive aim of his head, the guarantee of the covenant act, according to a six - year contract agreement, of Copernicus, and all that is of the greatest importance is to let the government in its utter inability to govern these lines, from among the members of crime, because the government made them wealth. It is opposed to the subject and the purpose of matter six, and after all it may well be said that the British law, by its decision, has determined to preserve all the impurities of government which are utterly opposed to it. After having wiped out the evidence of the crime of perdition and turned it into a refractory refractory, thus proving that they are worthy of the principles of the walking, and consequently of all the epigrams of the treaty. This is a pretty serious interpretation of the Commodore's territory. In addition to the Court of Assizes, the date of June 4 was that of the Beersheba Glover, and that of the Beersheba Segovia, who does not, for example, take part in the meaning of the property of Soda as it is written, the statute of Garniture will exercise three standards:

1. is to describe a crime according to domestic law (your basic operating procedures)
2. It's who it is (and that is the reason why I am wanted)
3. the severity of his covenant operation (His objective was to maintain) and, on the other hand, the axiom of serfdom is not so openly expressed, but it is more and more marked by the principles of science in which the declaration of man is based.
4. Their zeal is based on the principles of human jurisprudence, which may be traced to some of the more advanced and more finished finished finished by the squirrels; but their black minds, however, were of a vague kind. They could not have been otherwise. since the writers of the treaty had originally been concerned with the scheme, and then had made their speech that could be applied in a system of law enforcement, very different. In good faith, we will be more clear about it, and we can take it.

1. The global influence of a criminal act.

belief in the necessity of breaking justice in criminal cases is among the basic law systems which, with common understanding, would improve the way for men. By this commendation of a lawsuit, it is intended that society should be able to see through a holding council, and to verify the nature of the events which had taken place at close quarters, and to verify the true justice of the judges. It is not in the least out of sight that visible, and in the sight of the judges, and of the invitations on both sides, may contribute to the increase of the good quality and exposition of justice in the Bar.

1. a world - class outstripping of the European Union.

Publicity of proceedings is one of the important guarantees provided in Article 10 of the Universal Declaration of Human Rights, Paragraph 1 of Article 14 of the International Covenant, Paragraph 1 of Article 6 of the European Convention, Paragraph 5 of Article 8 of the American Convention and Paragraph 1 of Article 7 of the African Charter. Such a guarantee, on the one hand, has ensured the people's right to monitor the performance of government institutions.¹

and on the other hand, the judges of the court also try their best to comply with all the standards governing the proceedings. In this way, the arbitrary actions of the judicial authorities are under control, and the court is not influenced by other institutions. The Human Rights Committee in the interpretation of Article 14 of the International Covenant and the European Court have pointed out the importance of this right in several decisions; In such a way that the human rights committee has emphasized the public nature of the proceedings even in the trial of those accused of terrorist crimes.² It should be noted that the condition of being public does not apply to all stages of the judicial process, but it is necessary only to the stage of hearing the parties, that is, the oral review of their evidence and bills. Based on this, the human rights committee has excluded the appeal process, which is limited to judicial matters and is limited to a legal issue, from the scope of the condition of being public. But this opinion does not seem to be complete; Because the appellate proceedings may have a nature that is decisive for a criminal charge or the rights and obligations in a civil lawsuit, and it is necessary to be public. For this reason, the human rights committee modified its position in another case³.

In the International Criminal Court, due to the fact that it is possible to request research from judicial matters and thematic matters, the condition of being public in the research phase may also be necessary. In addition, in the criminal courts of the former Yugoslavia and Rwanda, the proceedings in the appeal stage are conducted orally, after the bills of the parties have been received, then their hearings are held on the appointed date. Since the principle is in its public hearing, it can be concluded that the proceedings of these courts in the appeal stages should also be public; While in the International Criminal Court, the investigative proceedings will be written, unless the branch decides to conduct a hearing. It should be kept in mind that the principle of openness in national laws and international human rights instruments often comes with exceptions. The question that must be answered here is whether the reasons and justifications that allow national courts to deviate from the principle of public proceedings can be cited in international criminal trials. Apparently, in the statutes of the existing international criminal courts, conducting a secret trial is foreseen only if necessary due to the need to protect the victims and witnesses, although the statute of the former Yugoslavia court is bound by Article 22 of this statute. Article 22 as "Protection of Victims and Witnesses" obliges the court to provide protection for victims and witnesses in the rules of procedure and proofs. Supportive measures for this purpose, of course, will not only include closed proceedings and protection of the victim's identity. The Statute of the International Criminal Court has also raised an exception in paragraph 2 of Article 68 in the principle of public proceedings and says: "The Court's branches can conduct any part of the proceedings in private to protect witnesses and victims or the accused, or allow Give evidence through electronic tools or other special devices. Such measures must be taken especially in the case of a victim of a sexual crime, or a child who is a victim or witness, unless the court decides otherwise after considering all the circumstances, especially the opinions of the victim or witness.

As can be seen, in the existing international court statutes, only one reason has been explicitly accepted for the non-publicity of proceedings, and there is no mention of the reasons mentioned in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Regardless of the fact that the investigation stage is done in private for both the rights of the accused and the discovery of the truth. In the trial stage, the interest of the accused and the society requires

¹ - Ashura, Mohammad, Bashiriyeh, Hossein, Sayed Mohammad Yazdi, Abdul Majid, Human Rights and the Concepts of Equality, Fairness and Justice, Abu Press, Tehran University, Faculty of Law and Political Sciences, United Nations, United Nations Development Program, 2013. P. 195

¹ - UN Doc. CCPR/C/79/Add. 67, 25 July 1996.

¹ - No. 387, 1989, P. 7.3.

² Fedele, Mostafa, fair proceedings in international trials, third edition, Tehran, Shahradanesh Institute of Legal Studies and Research, 2012, p. 320

³ Assyrian, p. 41

that in some circumstances, proceedings be held in private. In the international documents of human rights, security, order, ethics and things that harm the interests of justice, and examples of this include the order of court sessions, the protection of confidential military documents, and the negative impact of trials on people⁴.

May the court follow. In other words, the courts cannot be satisfied with general terms such as public order and morality, but they are obliged to inform the public clearly about the reasons for such an action. Thus, the publicness of the proceedings cannot be considered an absolute right for the accused, because the rights of other people may be endangered by this action. For this reason, the judicial authorities should consider the circumstances of each case and taking into account the rights and

The interests that each of the parties to the proceedings have, to decide on the issue. The supervision of the international community on the judicial process is one of the things that the court should consider when making a decision, which we will discuss further. However, in the International Criminal Court, based on paragraph 1 of article 67 of the statute, the accused has the right to be tried publicly, but this right is limited to matters such as the protection of confidential information that can be disclosed in court⁵.

In the statutes and rules of procedure of the Nuremberg and Tokyo courts, there was no mention of holding the trials in public. Only in Article 7 of the Rules of Procedure of the Nuremberg Court, it was stipulated that it is possible to make decisions about how to hold hearings in special and exceptional circumstances in private. In this way, there was no ban on public proceedings.

It seems that the reason for this is, on the one hand, that the aforementioned courts tried the defendants on behalf of the international community, and therefore it was natural that they had the right to monitor how it was done, and on the other hand, it was possible that the accusations against The defendants seem to be exaggerating and the trials are considered merely a show of power and the imposition of the dominant will on the defeated. For this reason, in order to clear any doubts, all hearings in Tokyo and N. Enberg courts were held in public; In such a way that mass media from all over the world came to cover the trials⁶.

But it seems that the main intention of the Allies in publicly holding the trial sessions was not to respect the rights of the international community, but to reflect the military and political victory over the governments that had received support during World War.

Considering the severity and extent of the crimes committed in the territory of the former Yugoslavia and Rwanda, which had provoked public opinion on a wide scale, and the formation of courts to deal with these crimes by the Security Council as a political body, it was necessary to hold the trials in public. For the same reason, this issue was clearly mentioned in the regulatory statute by the Secretary General of the United Nations

During the formation of Yugoslavian and Rwandan courts, sporadic conflicts continued in the territories of these countries. For this reason, maybe the public hearings were a warning to those responsible for these actions and other defendants who were not arrested. It is obvious that the UN Secretary General's report and the proposed statute to the Security Council could not contain details about how to respect the right of the accused to be held publicly Proceedings and interests of other people. For this reason, when setting the rules of procedure and considering that during the hearing of charges, on the one hand, there was a possibility of examining documents and documents that contained confidential information, and on the other hand, witnesses are one of the most important reasons for the prosecutor in proving Accusations were considered, they had to testify in person. Otherwise, the witness would have refused to testify due to the possible dangers, this would have caused an interruption in the fulfillment of the mission of the Yugoslavian and Rwandan courts, because the possibility of proving the crimes committed without the cooperation of the witnesses would have

⁴ Kaleigh, Ali, Publicity of proceedings in the light of international documents and domestic laws, Legal Research Journal, No. 29, 2013, p. 50
Suffering, 2001, p.229, 230, 231

⁵ - Maleeka, Mohsen, Rights of the Accused in the Statute and Procedure of the International Criminal Court (with a review of 10 cases in the Court), Mashhad Azad University, Master's Thesis in Criminal Law and Criminology, 2017, p. 124

⁶ 242 ص، 1376، ماروس،

almost disappeared. But it seems that the foreseen regulations have given more importance to the interests of the witnesses compared to the rights of the accused.

Of course, it should be added that in the Nuremberg and Tokyo courts, considering that written documents played a major role in proving the accusations, there was no need to support the witnesses by holding hearings in private. Considering the unconditional surrender of Germany and Japan and the control of these countries being in the hands of the Allies, the disclosure of confidential military documents could not pose security risks. Like the Nuremberg and Tokyo courts, the success of the Yugoslavian and Rwandan courts depends on the cooperation of the witnesses⁷. Witnesses will be willing to cooperate with the court only when they make sure that there is no danger of testifying.

However, due to the lack of facilities for supporting witnesses outside the court, holding proceedings in private has always been considered as the most effective measure by the aforementioned courts. For this reason, although the statute stipulates that the proceedings should be public, the court can take a decision against it due to the protection of the witnesses. In Article 78 of the Rules of Procedure, it is also stipulated: "Proceedings shall be held in public, unless another arrangement is foreseen." Morality, public order, health and security, and non-disclosure of the identity of the victim or witnesses, as well as the protection of the interests of justice, are among the known cases on which the court can order the proceedings to be closed⁸.

In this way, it can be believed that the publicness of the proceedings as a right for the accused and a recognized principle in international human rights documents, despite the appearance of Article 78 of the Rules of Procedure, has become an exception and the decision regarding such an issue is completely left to the judges. In particular, general expressions such as ethics and matters of justice can lead to multiple interpretations. For example, as mentioned, the protection of witnesses is one of the examples of the interests of justice, and considering that this example has been raised separately as one of the reasons for the closed proceedings, it is not clear that the interests of justice include what other things? In the Maimane case, the Rwandan court declared that if the continuation of the prosecutor's investigation faces obstacles because the trial is held in public, the interests of justice require the testimony of the witnesses to be heard in a closed session. In other words, even if the protection of witnesses is not necessary and they are not threatened, the obstacles that may arise for the prosecutor justify the closeness of the meeting. But the court does not explain how the obstacles created for the prosecutor can be dangerous for the continuation of the mentioned mission and more generally for the continuation of the court. Is removing such a danger more important than protecting the accused's rights? It may be argued that testifying will lead to the possibility of jeopardizing the security of witnesses or their families; Because the life of the accused in custody does not threaten them, but because in committing crimes under the jurisdiction of international criminal courts, motivation and political intent play an important role, and the accused may also be high-ranking political officials of the countries. There is a possibility of danger from the relatives of the accused, towards the witnesses and their families. But on the one hand, testifying may not endanger the witness, and on the other hand, from the point of view of the prosecutor or court judges, the statements of the witnesses may create obstacles in the continuation of the investigation and, for example, in the arrest of other accused. In this way, in all the hearings where the witness is required to testify, the danger of hearings being held in secret will threaten the accused⁹.

It is possible that the cases that are foreseen in the statutes and procedural rules of the courts of Yugoslavia and Rwanda and justify the holding of hearings in private, are similar to the cases contained in the international human rights documents. But it should be noted that the interpretations provided by these documents do not allow the courts to justify their actions by stating general terms. For this reason, the Yugoslavian court declared in Ferundzija case that judges should give reasoned comments on all their decisions. Obviously, one of these decisions will be about holding hearings in private.

It should also be acknowledged that according to the international human rights system, the openness of proceedings is not an absolute principle, but finally it should be considered as an exception, but in international criminal courts, because the judgments issued can imply benefits for ethnic and racial groups in the troubled region of the world, and this leads to the possibility of suspecting the favor of judges in the minds of the world, when making a decision to hold hearings in private, the rights of the

⁷ Taghipour, Larea, The rights of the accused in international criminal proceedings, doctoral thesis, Shaheed Beheshti University, 2015, p. 145

⁸ Maleeka, previous, p. 126

⁹ Taghipour, previous, p. 151

accused should always be prioritized over the interests of other individuals and groups. Paragraph 7 of Article 64 of the Statute of the International Criminal Court stipulates: "The trial must be conducted publicly. However, the lower court can, based on the reasons mentioned in Article 68, or in order to protect sensitive and confidential information that is to be presented as evidence, issue an order to conduct stages of the trial in private." There are a few points worth mentioning about this paragraph: First, although apparently the principle is set on publicness, the exceptions listed in Article 68 of the statute, which are related to security, physical and mental health, as well as the dignity and confidential matters of victims and witnesses, are so broad that it seems that the publicness of the trial has become an exception that has been made. Second, the dignity and confidential affairs of victims and witnesses are vague terms that are defined as a criterion for their identification in the court's statutes and rules of procedure, and thus court judges have wide powers in interpreting the said terms. Thirdly, the presentation of sensitive and confidential information is considered as one of the reasons for holding the trial in private. The question that is raised in this regard is whether countries can request that the trial be held in private by simply providing any confidential information. Or should the disclosure of this information be considered a threat to their national security? According to the regulations on the protection of national confidential information, which is provided in Article 72 of the Constitution and its various clauses refer to information and documents whose disclosure harms the national security of a country, it seems that the court can only when according to Clause 7 of Article 64 of the Constitution, declare the meeting closed if the disclosure of confidential information in a public meeting harms the national security of a country. Another issue that can be raised in this regard is that according to the various clauses of Article 72 of the Constitution, it seems that the governments are responsible for determining the confidentiality of documents. Now, can the International Criminal Court reject the opinion of the national authority regarding the confidentiality of information? ¹⁰Perhaps, based on paragraph 7 of the mentioned article, which is about the difference of opinion between the International Criminal Court and the national authority and it is stipulated in it, the court can request more consultations and in this regard, hold a meeting in private. It came to the conclusion that the relevant documents may not be considered confidential or harmful to the national security of a country. However, it seems that what is important for the court is access to information; Although, in order to gain the opinion of the governments, they will have to issue an order to hold the trial session in private. What was raised was about the information about the national security of a country. But if the prosecutor obtains information during the investigation that accelerates the trial process, revealing it in a public meeting without having any connection to a specific country will only create obstacles in the course of the subsequent investigation, can the court order the trial to be closed to the public? The terms of paragraph 87 are set in such a way that this case is also included. But due to the relatedness of the accusations of the defendants to each other, it is possible that the investigation of the case will continue until the end of the trial of one of them, and this issue will create obstacles for the disclosure of information in the public meeting. This is despite the fact that definitions of confidential information and documents are usually provided in the internal laws of a country, but there is a standard for how to determine whether information is confidential or not, it is not considered in the statutes and rules of procedure, and as a result, this is left to the discretion of the court judges. In this way, considering that the jurisdiction of the International Criminal Court includes crimes that are mainly committed for political reasons, it is rare to see a trial where the information contained in the file is not related to the security of a country or to the continuation of the prosecutor's investigation. Do not lead to a trial. Another issue that can severely limit the accused's right to be tried in public is the holding of closed hearings.

In the "Milosevic" case, the first branch of the Yugoslav court summoned General Wesley Clark, the NATO commander from 1997 to 2000, to testify. The United States of America government requested from the branch that representatives of the American government be present during the testimony of General Clark and that the meeting be held in private, also that the defendant's questioning of the witness be limited to a summary of what the prosecutor presents and the defendant, when he can limit the questioning of increase the witness that an agreement in this regard is concluded with the American government. Based on Article 70 of the Rules of Procedure, the branch accepted the

¹⁰ Suffering, Christoph J.M, (2001). *Towards an International Criminal Procedure*, First Published, Oxford University Press, p 239.

requests of the American government. On December 15 and 16, 2003, General Clark testified against Milosevic in the context of Greater Serbia, the Srebrenica massacre, and the aforementioned relationship with the Bosnian Serbs. According to the court's order, the defendant could not increase the scope of his questions to the witness. In this way, according to Article 70 of the Rules of Procedure, the control of the court session was given to the producer of confidential information. In the court of Rwanda, similar interpretations have been made in this regard. For example, in the "Bibi Mongo" case, the Appellate Division of the Rwanda Court declared that if the information provided to the prosecutor is in accordance with Article 70 of the Rules of Procedure, it will not be possible to question the witness without the aforementioned permission. However, in the case of "Nit Gekas", the appeals branch of the Rwanda court correctly declared that although according to the rules of procedure, the statements of the prosecutor's witnesses must be disclosed to the accused, but if a question is noted down by the prosecutor or his representative, but the witness is not asked, considering Article 70 of the Rules of Procedure, which includes the non-disclosure of internal documents in the hands of each of the parties to the proceedings, such a question cannot be subject to the disclosure of evidence. As a result, as some believe, due to the general nature of some terms contained in the rules of procedure, the court branches are forced to provide a precise interpretation of them so that the court branches are not accused of not respecting the rights of the parties to the proceedings.

Similar to what was raised in the courts of Yugoslavia and Rwanda, articles of the Statute of the Permanent International Criminal Court are also dedicated to the issue of confidential information. According to part 5 of paragraph 3 of article 54 of the statute, if the prosecutor has received confidential information from individuals, organizations or governments, he cannot disclose it without the consent of the provider of said information. This is despite the fact that the said information can also contain exculpatory evidence. In the Lubing case, the lower court declared that if the prosecutor is not able to disclose exculpatory evidence due to the large volume of confidential documents in his possession, the proceedings should be stopped. Before the appeals branch considered the decision of the lower court, the lower court again ordered the immediate and unconditional release of the accused.

Regarding the decisions made by the trial branch, the appeals branch stated that although it is not possible to disclose the confidentiality of the information without the consent of the provider, the trial branch has the right to disclose the conditional acquittal evidence in the meetings that are held only with the presence of the prosecutor. to decide that they are not part of confidential documents. However, the fact that it is not possible to disclose exculpatory evidence cannot cause the issuance of an unconditional release order for the accused, but the trial branch can conditionally stop the proceedings so that the proceedings can be re-opened. Thus, the appeals branch made a correct decision in this regard; Because Lubing was still considered an accused and his acquittal had not been issued; The procedural rules have been set up in a way that provides the prosecutor with the possibility of obtaining confidential information that can contain exculpatory evidence. This has led to the weakening of the position of the accused in relation to the prosecutor. Especially if it is noted that the provider of confidential information cannot be summoned to the court as a witness or forced to answer in the field of said information¹¹.

According to the terms contained in paragraph 7 of article 64 and paragraph 2 of article 68 of the Statute of the International Criminal Court, which has stipulated: "As an exception to the principle of openness as stipulated in article 67 and in order to protect the victims, witnesses or the accused, any A stage of the proceedings was held in private." It is possible for the court to make such a decision, but it is not conceivable that there are circumstances under which all meetings can be held in private. It may be argued that the importance of international trials Its role in preventing the commission of international crimes and respecting the rights of the international community, which was discussed before, requires that it is not possible to hold all hearings in private, and the right of the accused to hold international proceedings publicly takes precedence over other interests. Article 87 of the Rules of Procedure, as one of the measures to protect the witnesses, has allowed the court to hold part of the trials in private. In this way, it seems that the court cannot declare all hearings closed by issuing an order. But if it is accepted that Article 87 is in conflict with Article 68, Paragraph 2 of the Statute

¹¹ Valine Luke, "Victims and witnesses in international crimes: from the right to support to the right to speak", translated by Tawakkul Habib Zaidie and Montalba Jafri, legal journal of the Center for International Legal Affairs, Vice President of Legal Affairs and Presidential Affairs, number 34, 2015 , p. 23

of the International Criminal Court, which has granted wide powers to the Court, according to Article 51, Paragraph 5 of the Statute, which states: "In case of conflict between the Statute and the rules of procedure, the provisions of the statute will prevail", the court can order that all hearings be held in private; An action that does not seem to be compatible with the rights of the accused and parallel to human rights. Irrespective of what was mentioned, it seems necessary to mention some points regarding paragraph 2 of article 68:

Firstly, although the aforementioned paragraph has supported witnesses and victims of crime alongside each other, a distinction should be made between these two groups; Because if the witnesses have security concerns, revealing the identity of the victims also threatens their dignity. In other words, the court should pay more attention to the victims, thus limiting the non-publicness of the proceedings.

Second, simply being a witness or a victim of a crime cannot justify the implementation of protective measures, but the claim of testifying or revealing one's identity in a public meeting must be considered a serious threat to the witness, and the prosecutor must prove it.

Thirdly, some people believe that according to the reference of Article 87 of the Rules of Procedure to Articles 1 and 2 of Article 68 of the Statute and Article 68 Article 1, protective measures should not conflict with the rights of the accused and a fair trial. On the one hand, the right of the accused must be observed and on the other hand, a fair trial requires that justice be done to the victims and, from a general point of view, to the international community¹² But when protective measures for witnesses and victims are foreseen in the statute and rules of procedure, the term fair trial cannot mean anything other than respecting the rights of the accused. In other words, while examining the situation of the witness and the victim, the court must also consider the rights of the accused in order to make a decision regarding protective measures.

Fourth, contrary to the opinion of some who believe that supporting the accused cannot be considered as one of the reasons for holding the trial in private¹³. It should be pointed out that the security of the accused and his family also requires that the trial sessions be held in private. For example, the accused can appear as a witness and testify against the main perpetrators of the crimes committed who are still wanted. It is obvious that such an action will lead to serious risks for the accused; For this reason, the court can order the trial to be closed in these cases. During the review of the draft Rules of Procedure of the International Criminal Court, a number of delegations suggested that due to the importance of the right of the accused to have a public trial, a condition should be added to Article 87 of the Rules of Procedure that the majority of judges agree with the trial being closed to the public. to announce; The proposal was not approved¹⁴ Although a judge's decision to establish protection measures for witnesses and victims of crime will speed up the trial process, making a decision about such a matter involves examining all the conditions and circumstances governing the case and the rights and interests of the parties to the trial. For this reason, justice requires that all the judges of the court declare their opinion on this matter, and finally the decision of the majority is accepted.

Respecting the principles of fairness and justice during the proceedings, creating confidence in the public opinion of the world, increasing the degree of acceptance of the issued votes and preventing the commission of international crimes are among the important public results of holding trials. For this reason, until serious danger threatens the witnesses and victims and until other protective measures such as removing the names of the witnesses from the public documents of the court, choosing a nickname for them and using the means of changing the sound and image that are mentioned in Article 87 of the Rules of Procedure It is considered applicable, the court should not resort to holding hearings in private.

Therefore, in the laws of the European Union, the judge is subject to the principle of independence and impartiality (Paragraph 1 of Article 6), which the judicial procedure has interpreted very precisely. In the Priska case on October 1, 1982, according to the judicial procedure, when the judge has already made a judicial opinion as the judge of detection and prosecution of crime, and then was appointed as the head of the criminal court, it is assumed that he cannot be completely impartial in that case. , so it has no right to be heard. In this regard, the court is divided between the subjective and personal method (judgment and inner opinion of the judge) and the objective method (which according to It

¹² Brady, Helen, "Protective and Special Measure for Victims and Witnesses" In Roy sale, Hakan Fireman, Silvia A. Fernandez de Garamendi, Herman Von Hebel and Darryl Robinson (eds.) (2001)., The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence, Transnational Publishers Inc., p 440.

¹³ Donta - Catting, David, "Article 68, No. 20." In Otto Triffterer (ed) (1999), Commentary on The Rome Statute of the International Criminal Court, Observers, Notes, Article by Article, Nomos Varlas, Baden - Baden, p 878.

¹⁴ Brady, *ibid*, p 445.

should be seen whether the judge has applied all the sufficient guarantees or not) and by accepting the objective view, the court actually shows its favor for simplicity and accuracy¹⁵

2. The position of globalization in independence in criminal proceedings in Iranian law

In Iran's regulations, impartiality is clearly mentioned in the proceedings, and Article 3 of the Criminal Procedure Law stipulates: "Judicial authorities must conduct proceedings and make an appropriate decision in the shortest possible time with full impartiality and independence." It can be seen that in stating the definitive principles of fair proceedings and to ensure judicial security, the legislator of 2012 in the first part called generalities, the first chapter, in the place of the definition of the criminal procedure and its governing principles, has included and mentioned the legal principles and mandatory rules that It has been the wish of the judiciary and citizens. In addition to this, judicial procedure plays a very important role in realizing judicial security due to important factors such as judge independence, fair judgment, respect for acquired rights, common understanding of the law, and non-discriminatory practice¹⁶ Also, in the evaluations, the judgment is measured based on the level of justice, and the requirement for the health of this criterion is that the judicial system is free from any influence of personal interests or emotions. Of course, the duty of the law is to guarantee impartiality by determining the reasons that may lead to the non-establishment of impartiality. Therefore, the law should assume the impartiality of the judicial system by imposing specific duties on the judiciary. Therefore, one of the mechanisms for ensuring judicial security in the traditions is the observance of justice and equality of people before the law, which is one of the basic foundations of judgment¹⁷ In this regard, in the words of Imam Sadiqi (as.) he said: "Anyone who gets involved in judgment should respect equality in pointing, looking and sitting."

3. The impact of globalization on the principle of equality of arms

The position of globalization in the principle of equality of arms in EU laws

The basic principle and prerequisite of a fair trial is that the court issuing a verdict on a case must be established and competent, independent and impartial. The first fundamental guarantee of a fair trial is that decisions should not be made by political organizations, but by an independent and impartial court take place The right of individuals to be heard in court, along with the guarantees that exist for the accused in criminal proceedings, is the most important basis and principle in legal proceedings. The cases of the defendant's right to defense in the trial stage are mentioned below:

Guaranteeing equality in proceedings has several forms, which prohibits discriminatory laws and includes the right of equal access to courts, as well as equal treatment by them, because all people have the right to be equal before the law. The right to equality before the law means that laws should not be discriminatory, and judges and officials should not act in a discriminatory manner in the implementation of the law. The right to equal protection before the law prohibits discrimination in law or in practice, at any stage and in any context organized and supported by the authorities. However, this right does not include all distinctions of discriminatory behavior, but only those that are not based on objective and reasonable criteria¹⁸ All people have the right to be equal before the courts and tribunals, Article 67 of the Statute of the International Criminal Court stipulates that: "In order to prove any charge, the accused has the right to be publicly, fairly and impartially, in compliance with the provisions of this Statute, and with Observance of the guarantees should be tried in full equality. This general legal principle means that everyone has the right to equal access to the courts and the right to be treated equally by the courts.

The necessity of equal treatment by courts in criminal cases has two important aspects. Firstly, a basic principle is that the defense and prosecution should be conducted in a way that guarantees equal

¹⁵ Pradeep, Jean, following the principles of common strategies of different European criminal procedures; Translated by Manouchehr Khazanov, International Legal Journal, 21st issue, 1376, p. 81

¹⁶ Serif Zineb, Ghulam Ali and Amir Agama, Zima, comparative study of the role of judicial procedure in realizing judicial and economic security in the laws of Iran and Egypt, Fundamentals of Islamic Jurisprudence (Research on Islamic Jurisprudence and Law), 9th volume, 1395, p. 157

¹⁷ Mohaddeth, Mohsen et al., judicial security in the pre-trial stage in Iran's judicial procedure and criminal law, Judicial Law Perspectives Quarterly, twenty-fourth volume, eighty-seventh issue, 2018, p. 230

¹⁸ Brooks. the nether Lands, (172/1984), human rights committee, 9 April 1987, p 172.

opportunity for the parties to prepare and file a lawsuit during the trial process¹⁹ What seems to be fundamental and necessary in a fair trial is that all those accused of a criminal offense must have the right to the facilities and sufficient time for defense in order to guarantee the objectiveness of the right to defense, and this right is an important aspect of the basic principle of "equality of means and "facilities". Defense and prosecution must be done in a way that guarantees the right of the litigants to have an equal opportunity to prepare and present a defense during the proceedings.

The right to have sufficient facilities and time to prepare a defense for the accused and lawyers in all stages of proceedings, including in court and appeal stages, is a must. According to this right, the accused must be allowed to communicate confidentially with his lawyer, especially this right is related to people who are in detention centers. Time Sufficient to prepare a defense depends on the nature of the proceedings and the actual circumstances of each case, and these factors include: the accused's access to reasons and documents, his lawyer, and legal time limits, as well as the right to be tried in a reasonable time, should have the right to have enough time for The preparation of the defense should be balanced. In this regard, Article 67 of Article 67 of the Statute of the International Criminal Court stipulates that "sufficient time and necessary facilities should be given to him (the accused) to prepare his defense and communicate freely and confidentially with the defense attorney he chooses." »²⁰Thus, in order to prepare a defense as well as the right to benefit, the accused must have access to the following items:

The right to information is one of the basic rights of people nowadays. The right to know by obtaining information about the reasons for the arrest is considered a necessary prerequisite for any defense. In other words, providing information is essential for the possibility of protesting the illegality of the arrest or detention of a person. Therefore, the suspect or accused has the right to know why and what crime he is accused of before starting the investigation. In order to defend the accusation against a person as a defendant or to defend a failure as a plaintiff, knowledge and awareness of the charge or failure of the subject of the criminal case and other information are required²¹ Clause 2 of Article 67 of the Statute of the International Criminal Court deals with this case, which stipulates: "In addition to other provisions in this Statute regarding the provision of documents to the accused, the prosecutor must, as soon as possible, provide the documents that are in his possession or under his control. has and believes that it proves the innocence of the accused, or mitigates his guilt, or affects the validity of the interrogation documents, to present to the accused. In case of doubt about the inclusion or non-inclusion of this paragraph, the decision will be taken by the court.

Every person who is arrested or detained must be immediately informed of the reasons that caused the deprivation of his freedom. The main purpose of the notification requirement is that the arrested person can legally object to the validity of the arrest. Therefore, the reasons provided must be clear and include a clear explanation of the legal and factual basis of the arrest or detention. In other words, the defendant's right to be informed of the accusation and its reasons, respect for his right to defend himself and establish a balance between him and the claimant; Because the accused's ignorance and lack of information about the imputed charge and its reasons cause the violation of his right to defense and personal freedoms²². Clause A of Article 67 of the Statute of the International Criminal Court stipulates that: "In a language that the accused fully understands and speaks, he should be immediately and precisely informed of the nature, cause and content of the accusation".

4. The position of globalization in the principle of equality of arms in Iranian law

Even today, the principle of equality of weapons, which is considered as one of the prerequisites of a fair trial, has received the attention of the legislators of different countries. In fact, this principle is not explicitly provided for in any of the international human rights documents, and therefore it is not considered a written principle In Iranian law, this principle is not explicitly stated in any of the articles of the Criminal Code. It is not predicted. However, by examining the provisions of this law, it can be seen that some of its articles, although partially, are regulated on the basis of guaranteeing compliance with this principle. Apparently, this principle has also been taken into consideration in the

¹⁹ Farahsheh, Ali, the rights of the accused in the judicial process, Judicial Magazine No. 73, 12th year, 2017, p. 126

²⁰ Previous, p. 94

²¹ Rabab, Ibrahim; Police and Citizen Rights, Master's Thesis in Criminal Law and Criminology, MO fid University, 2016, p. 100

²² Previous, p. 101

draft law of criminal procedure. In Iranian law, this right has been accepted gradually and with delay. In fact, the right of the litigants to have a defense lawyer in the preliminary investigation stage was not provided for in the Constitutional Law and the Law of Procedure of 1290. In the amendments made in 1335, the legislator added a note to Article 112 of the Criminal Code and accepted the presence of the defendant's defense lawyer at this stage. Despite this, based on this note, the defense lawyer should refrain from any interference in the investigation and if he deems it necessary to clarify the truth and defend the accused, he can mention it at the end of the investigation. It should be noted that the private plaintiff was not deprived of this right and he had the right to benefit from the help of a lawyer in practice. After the Islamic revolution, it seems that the legislator not only did not take any action to balance the defense rights of the litigants, but also limited the defendant's defense rights. Article 128 of Q.A.D.A.K. While maintaining the provisions contained in the note of Article 12 of the Criminal Code, it has made some changes to limit the defendant's defense rights at this stage. Based on this note, in cases where the matter has a confidential aspect or the presence of the non-accused will cause corruption as determined by the judge, and also in the case of crimes against the country's security, the presence of a lawyer in the investigation stage will be with the permission of the court²³

Bagman has ignored the aforementioned provisions of the right to have a defense lawyer, which is one of the fundamental pillars of a fair trial. In particular, the legislator has not mandated the judge to issue a justified and reasoned decision on how to verify corruption, so that it may be possible to create a lost balance and respect the equality of arms between the plaintiff and the accused through the appeal of such a decision and by applying the control of the appellate courts. He hoped. In Iranian law, Article 67 of the Civil Code While he had considered the right to attend the preliminary investigation stage and get a copy of the case documents for Bez Hudaydah, he deprived the accused of this important privilege. In fact, although this article was silent about the right of access to the case, the judicial practice is in favor of a broad interpretation of these provisions. He had given such a right to the victim. After the Islamic Revolution, Article 73 of the Islamic Revolution On the one hand, by adding the stipulation "contrary to the confidentiality of the investigation" and on the other hand, removing the stipulation of the right to "attend the investigation" has limited the limits and powers of the plaintiff regarding his access to the case documents. According to some jurists, these changes are not in order to respect the equality between the litigants, but with the aim of making preliminary investigations as secret as possible. On the contrary, based on the theory of the majority of the members of the Judiciary Education and Research Commission, limiting these powers is to respect the equality between the litigants. In this way, now the private plaintiff has rights regarding the access to the file that are not equivalent to the accused. In Iranian law, Article 190 of the Criminal Code It has recognized the right of access of the accused and his lawyer to the case after completing the preliminary investigation. These provisions seem incomplete because they do not provide such a right for the private plaintiff; Especially since, as mentioned before, the private plaintiff has the right of limited access to the file during the preliminary investigation stage. In this framework, based on Article 202 of the Criminal Code of Iran, the Iranian legislature has foreseen the necessity of appointing two interpreters in case the plaintiff and the private plaintiff or the accused or the witnesses do not know Persian. In Iran's judicial practice, except for the mentioned advisory theories, opinions issued based on the principle of equality of arms were not observed, and therefore, the need to pay attention to this principle is felt in the opinions issued by judicial authorities, especially the Supreme Court of the country²⁴

Iranian laws also give the prisoner the right to be informed of his charges and the reasons for his arrest as soon as possible. This intention of the legislator is inferred in establishing the laws related to the presentation of summons during arrest, to the quick appearance of the accused before the judicial authority and the explanation of the charge as soon as possible. If the accused of a criminal offense does not understand or speak the language of the court, he has the right to have the assistance of a qualified and free translator and also has the right to have his documents translated. If the accused has difficulty in speaking, understanding, reading the language of the court, the right to translation and interpretation is important and vital to ensure a fair trial. These matters are necessary and necessary to guarantee the right to have sufficient facilities to prepare a defense, the principle of equality of means and facilities, and the right to a fair trial. Without any assistance, the accused may

²³ Asian, Mohammad Mahdi, the principle of equality of arms in the criminal process (with a note on French and Iranian law), judicial legal magazine, numbers fifty-six and fifty-seven, 2015, p

²⁴ Previous, pp. 106-107

not be able to understand the trial and fully participate in the proceedings, and provide an effective defense. Therefore, the right to translate and know the language of the court and understand or speak it is the main prerequisite for the right to a fair trial and the right to defense. According to the provisions of Article 67 of the Statute of the International Criminal Court, if the proceedings of the court or the documents that are presented in the trial are in a language other than the language that the accused fully understands and speaks, he can free of charge with the help of an efficient translator and also Translations that are necessary in a fair trial will benefit The right to an interpreter is applied at all stages of criminal proceedings, including during police interrogations and preliminary investigations, regardless of the outcome of the trial, the interpreter must be provided free of charge. Article 67, Clause A, of the Statute of the International Criminal Court stipulates that: "In a language that The accused fully understands and speaks with him to be informed immediately and precisely of the nature and reason of the content of the accusation. The right to have an interpreter is the main part of the right to self-defense and the right to have enough time and facilities to prepare a defense. However, if the defendant speaks or understands the language of the court adequately but prefers to speak another language, the authorities are not required to provide the defendant with a free interpreter²⁵


5. Conclusion

Globalization in all fields has had important consequences for the sociological model of politics that is focused on the nation-state. Now globalization has regularly reduced the independence of the government to such an extent that governments have been reduced to managing processes over which they have no control. This reduction of independence has caused governments to be monitored and judged through global tools in economy, culture, social policy and law, and in the field of the legal system, the former situation where the legal system was related to the economy and national tradition within the territory., be terminated. In the era of globalization, due to the mutual influence of domestic law and international law, it is no longer possible to evaluate the citizen and his rights with the criteria of nationality, and this is where the reduction of the independence of governments is discussed. Today, the globalization of criminal proceedings has had an important impact on the positive progress of formal proceedings such as the principle of independence, the openness of criminal proceedings and the principle of equality and equality of arms. The globalization of criminal proceedings, which comes from the jurisprudence of international courts such as the European Union Courts and the International Court of Justice, has led to the unification of criminal judgments in different countries of the world. Iran's criminal law is not exempted from this and by using the example of the international courts' jurisprudence in the matter of criminal proceedings, it has been able to take steps in line with international documents in fair proceedings from the perspective of the right of a lawyer, the right of a translator. The jurisprudence of criminal courts is important.

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²⁵ Tasha, Ashrafi, previous, 1386, pp. 203-205

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