

Original Paper

The Right of the Accused to Compensation in the Iranian Criminal Justice System

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Abstract

Normally, the right to compensation refers to the victim's compensation. The legislator also typically refers to the right to it, as the Iranian Criminal Procedure Code has done so in articles 14 and 15. But the present paper, refers not to the victim's, but the accused right. The Criminal Procedure Code of 1912 and 1999 referred to the possibility of compensating the accused by the iniquitous private complainant. However, none of them referred to the government's obligation to compensate to the innocent accused. In contrast, the Penal Code of 2014 stipulates the government's obligation to compensate the defendant for damages, but does not rule out the possibility of compensation by iniquitous complainant. Certainly, it does not exempt the complainant to compensation. Reaffirming the responsibility of the government to offset the losses of innocent accused, in line with international conventions, is one of the highlights of the new code. But the lack of compensation for unjustified detention is one of the gaps in the new code. This paper proposes that the Iranian new code of criminal procedure, serves as a development in respecting the accused right in creating comprehensive compensation schemes.

Keywords

the innocent accused, compensation, right, government, complainant

1. Introduction

"The history of the topics of wrongful conviction, and of compensation therefore, appears to justify the conclusion that, at least since 1760, when criminal practice and procedure assumed their present form, wrongful convictions have always been a rare, and are a diminishing quantity" (COMPENSATION IN CASES OF WRONGFUL CONVICTION, pp. 254-304).

The compensation discussion is the place where two rights are crossed. On the one hand, there is the

right of the victim to lodge a complainant, which is stipulated in Article 34 of the Constitution (Note 1) or the obligation of the prosecutor to start a case according to the principle of compulsory prosecution, which is referred to in article 11 of the criminal procedure code 2014. On the other hand, the defendant is entitled to compensation. The legislator saw the way to resolve the conflict as compensation for the defendant. The two previous codes considered the solution in case the complainant is iniquitous. The new code has not explicitly referred to it, but according to general rules of civil liability, whoever, illegally, damages others, has to compensate.

“Criminal prosecutors, like other public servants in a representative democracy, must continually work out what it means to ‘represent’ the public” (Staszewski, 2009, pp. 56-84). So, the Prosecutor as the representative of the community and responsible for the security of the community prosecutes those accused of committing a crime. Although that is contrary to the presumption of innocence, but his action, in some cases, requires the denial of freedom from the accused. The government exercises sovereignty in the community and the exercise of sovereignty may lead to harm to individuals. The accused are in a worse situation. The prosecutor uses all community facilities against them and even if the accused actually committed a crime, they are in a very bad situation compared with the prosecutor. He lacks the facilities. He is only an accused and is known innocent until the alleged charge is proven. Due to the weakness of the defendant’s position, the legislator tries to develop his situation, which is interpreted as equality of arms. Inequality of arms between the Prosecutor and the accused can undermine the legitimacy of any criminal court over time and affect its credibility. “Equality of arms requires that the parties be allowed access to facilities on equal terms and have a reasonable opportunity of presenting their case under conditions which do not place them at substantial disadvantage vis-à-vis their opponent” (O’Boyle, 1995, p. 218). Equality of arms is one of the main components of fair trial. “The right to a fair trial entails protecting the ‘equality of arms’ principle, an inherent element of the due process of law in both civil and criminal proceedings. Strict compliance with this principle is required at all stages of the proceedings in order to afford both parties (especially the weaker litigant) a reasonable opportunity to present their case under conditions of equality. Indeed, at the core of the concept of ‘equality of arms’, as elaborated in domestic and international case law, is the idea that both parties should be treated in a manner ensuring that they have a procedurally equal position to make their case during the whole course of the trial” (NEGRI, 2005, p. 513). It could be said that “in essence, the equality of arms principle speaks to the virtues of procedural equality: the idea that both parties should be treated in a manner ensuring that they have an approximately equal opportunity to make their case during the course of a trial. Such protections are guaranteed in most domestic legal systems, are enshrined in relevant international instruments (such as the two we examine in this paper) and are the procedural bedrock of all major international courts and tribunals” (Gamble, 2009, pp. 187-216). One of the instruments is presumption of innocence. Article 37 of the Iranian Constitution has also referred to it (Note 2). Because of that the prosecutor bears the burden of proof. “Ancient maxims and rules maintain that allegations must be proven by those who make them,

and the accused must be considered innocent, and must therefore normally not be deprived of status and liberty in the interval between accusation and judgment” (Quintard-Morenas, 2010, pp. 107-150). “The prosecutor evaluates evidence and then carries out a ministerial duty to file charges whenever the evidence is sufficient” (Herrmann, 1974, pp. 468-469). Item 2 of article 14 of the international covenant on civil and political rights has also referred to it. According to it “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”. “The presumption of innocence impels the relevant authorities to act ‘as if’ the defendant is innocent in order to suspend any definitive judgment on the defendant's culpability” (De Jong, 2016, pp. 32-49). Thus, “the maxim of ‘innocent until proven guilty’ signified that jurors convict only when there was enough proof that the crime was committed” (Baradaran, 2011, pp. 723-728). The reason the law provides for compensation is that “law and justice are two historical twins” (Katouzian, 2008, pp. 150-194). Justice requires compensation when a person has been unjustly prosecuted. Especially, when the freedom of the accused has been unjustly stripped, moral and Justice require compensation. It can be said that the law for compensation has a moral basis too. The rationale of the cause of action for damages for malicious prosecution is that the Court’s process has been abused (FREDERICK McLELLAN, 2013, pp. 59-92). Regarding the mentioned problems, now in some countries, there is an Innocence Movement. “Innocence Movement is a civil rights movement that seeks not only to free innocent inmates from their wrongful convictions, but to understand the problems that lead to wrongful convictions and to reform and improve the system to make it more accurate” (Godsey, 2015, pp. 13-37).

In the Iranian criminal justice system, the right to compensation is not limited to innocent accused, but also includes cases where the person is convicted and the penalties imposed are disproportionate and arise from the judge’s mistake. In some cases, in spite of the fact that the prosecution is being stopped, the legislator has provided compensation. Now, with this introduction, we will explain the various aspects of the compensation process for the defendant in the Iranian criminal justice system.

2. Method of the Research

The research method is descriptive and analytical. This explains that by studying the historical record of the compensation of the defendant in the legal system of Iran and focusing on the criminal procedure code of the year 92, various aspects of the discussion have been considered and the points of weakness of the law have been investigated. So, data collection and data analysis represent the core of research. I have also addressed a range of different elements within the scope of the research.

3. Result

The problem of wrongful imprisonment is not a new one, but undoubtedly, public awareness about innocent prisoners has increased in recent years. However, as much as the number of innocent prisoners increases, this problem also attracts more attention. By paying more attention to this problem,

lawmakers were forced to adopt protection laws in this regard. It could be said that the right of innocent defendants to compensate for damages is one of their fundamental and basic rights. In a case that the accused has spent a long time in prison, his reentry into society is very difficult. He is free, but his entry is difficult.

Although Iran has certainly come a long way in developing a comprehensive compensation scheme, there is room for minor improvement.

In recent years, the number of exonerations of persons wrongfully imprisoned has increased nationwide. With the number of exonerations continually on the rise, Iran, has addressed the needs of exonerees with legislation that provides for the compensation of these individuals. The criminal justice system has failed these individuals in one way or another, and after years in prison, many are in need of more than money upon release. By increasing monetary amounts, Iran leads in offering service to those individuals who have had their lives stripped from them for their respective wrongful imprisonment.

Those states that offer only monetary compensation are lacking the perhaps more important services for exonerees. The need for services such as these was succinctly expressed by one exoneree:

“It just doesn’t seem fair that after you take eighteen years of a person's life and you think now you can send them into the world and everything’s going to be all right because now they have their freedom? Yeah, freedom is important, but you also have to have a lot of different things set up for people. You have to have programs for people who are wrongfully convicted because there are a number of people wrongfully convicted” (Note 3) (Armbrust, 2004, p. 157).

Monetary compensation does not reimburse all the damages and does not restore and reimburse the damaged reputation. The exonerated person loses his social position and situation. The society loses his confidence on him and does not trust him like before. Even the release of the verdict does not solve all his problems and his previous life is not to reintegrate him into society so he can function as normal citizen.

In addition to the monetary compensation, the state should supply financial support for basic necessities, including subsistence funds, food, transportation, help securing affordable housing, medical/dental care, and psychological and/or counseling services, assistance with education and the development of workforce skills and legal services to obtain public benefits, expunge criminal records, and regain custody of children.

Iranian code of criminal procedure has two basic deficiencies regarding compensation for the accused. First, it does not refer to unjustified and unnecessary detentions. It means that, while the accused finds a conviction, the judges could take another security measures instead of detention. So, if the judge issues an order of detention, whereas he could take other security measures, the government should compensate and refer to the faulty judge. Second, it does not refer to wrongful convictions which finally the result in exoneration of the accused. Suppose that the primitive court convicts the accused, but he has a successful appeal the appellate court exonerates him. He has paid so much money to defend himself, he has lost his time and reputation.

Lack of provision for compensation for unjustified detention is one of the gaps in the new law.

4. Discussion

4.1 Concept of Damage

The legislator has not defined damage. It seems that damage has a wide meaning and definition. Some believe “Wherever there is a defect in the property, or a deliberate loss of interest or damage to personal health and dignity or passions, it is said to have harmed. It is harmful to him to reduce his property and prevent it from spreading to any title” (Katouzian, 1995, p. 219). Article 14 of the Iranian criminal procedure code refers to both material and spiritual damages. According to it “the plaintiff can claim all the material and spiritual losses and possible benefits of the crime”. According to Note 1 of the same article “Spiritual harm is a mental injury or disruption of personal, family or social dignity and privilege. The court may, in addition to the award of a damages decision, order damages in other ways, such as the obligation to apologize and publish it in the newspaper or the like”. According to Note 2, “the possible benefits are limited to cases where the something has been destroyed. Also, provisions related to possible benefits and the payment of spiritual damages, does not include specified Ta’zir offenses in the Islamic Sharia (Note 4) or in cases relating to Blood money”. It means that, in the latter cases, the court cannot convict the accused to pay spiritual damage. It is important to realize that from law view point compensation does not only mean money and the innocent accused deserves both material and spiritual compensation. It is clear that it is foreseeable that exorbitant claims will also be made for the efforts of proving innocence and obtaining rightful exoneree compensation. The possibility of claims such as these can be avoided in the future and the commission should consider such costs and attorney’s fees in exoneration cases. Because “the indigent defense system has the duty to provide effective assistance of counsel to individuals who have been charged with a crime” (Rigg, 1999, pp. 2-48).

One of the difficulty is as to the amount of compensation. To solve this problem we can frame a scale which, having regard to the position in life of the person, the time of detention, would ensure proper compensation being given in all cases.

4.2 Cases of Compensation

The compensation cases are different and can be reviewed as follows:

4.2.1 In Case of Wrongful Conviction

According to article 13 of the Iranian Penal Code “Imposing and executing a punishment or security and correctional measures shall not breach the limit and conditions specified in the law or the judgment; and any loss or damage, if caused deliberately or negligently shall be followed by criminal and civil liability accordingly; otherwise, the loss shall be recovered from the public treasury”. The question is that can the general responsibility of the state for compensation be inferred from this article? It seems that the answer to the question should be negative. Explaining that in accordance with the article, the condition of liability is:

- 1) The person has been convicted. Therefore, this article refers to the responsibility against the convict and not the accused.
- 2) The judge issuing the judgement (whether a lower-level judge or appeal) exceeds the amount of punishment or security measures more than prescribed in the law, which, contrary to the quality stipulated in the law, or prescribes the execution of punishment contrary to law.
- 3) The judge enforces the sentence or security measures in contravention of the procedure prescribed in the law, or does not comply with the provisions of the law in respect of the quality of the execution.
- 4) The legislator has ruled on the responsibility of the judicial authority or the general treasury (beit-al-mal) conditional on “any harm and consequential damages resulting from this”, but it should be considered as indisputable. Therefore, the mere violation of the amount and quality prescribed by law or the court order requires responsibility.

The legislator has distinguished between the two situations. The judge will be liable in case of having intention or fault, but if he is not guilty of any fault, the general treasury will be liable for compensation. For example, the judicial authority orders the execution of the lash penalty, and the execution officer observes all the rules related to the execution, and, however, the punishment injures the convict. The general treasury will be liable for compensation. So, it seems that this article provides an introduction to the problems of wrongful convictions and the need for compensating those individuals, and their respective families, who suffer the failure of the criminal justice system. Therefore, “it is recognized that the state’s responsibility in relation to wrongful convictions should not, and does not, end with the quashing of such a conviction. But on the other hand such recompense does not arrive quickly and neither can it compensate for the horrors that have been endured by defendants and their families” (Taylor, 2002).

4.2.2 In Case of Exoneration

Although some believe that “the road to being compensated for wrongful imprisonment necessarily begins with a wrongful conviction” (Shaw, 2010-2011, pp. 593-617). But, according to article 255 of the Iranian criminal procedure code “Persons who are detained in the course of preliminary investigations and proceedings for any reason and who are exonerated by the judicial authorities or prosecutors, may, in compliance with article 14 of this law, demand for compensation from government”. It seems that by referring to article 14 the legislator looks for the compensation of all (material or spiritual) damages of the innocent accused. The legislator only refers to compensation in case of detention order and does not refer to the claim for compensation in other assumptions. In other words, the accused cannot claim compensation for the undue assignment by which the prosecutor which inflicts him material or moral damages. Therefore, the legislator prescribes compensation only on the assumption of the deprivation of liberty that is recognized unjustified. Between illegal and unjustified detention there is a difference that in cases of unjustified detention, the actions of judicial authorities are made in accordance with the evidence in the file and in accordance with the rules, but

they eventually conclude that the accused has been innocent but, in illegal detention, from the outset, the denial of freedom was against the law.

“For decades, scientific evidence was widely considered infallible. Thought to derive directly from the hard sciences, it was said to produce information that was straightforward, objective and highly reliable. However, the exonerations brought about by the Innocence Project revealed for the first time in a systematic way the extent to which scientific evidence derived from disciplines such as serology, bite mark comparison, fingerprint comparison and even forensic DNA analysis had contributed to the conviction of innocent people” (Garret, 2011). “Scientific evidence can be erroneous for various reasons. First, scientists can voluntarily falsify laboratory results, because of time pressure or bias, paired with dubious professional ethics. Most errors due to improper handling of scientific evidence are not voluntary, however. They include contamination of samples, transfer of material, switching and mislabeling of samples, clerical errors and errors in the interpretation of the data. Finally, erroneous interpretation of data can also be caused by cognitive biases” (Vuille, 2015, pp. 39-55).

The notion of unjustified detention is more general than the concept of illegal detention and includes the concept of illegal detention. The legislator, in article 256, refers to cases in which the accused is not entitled to receive damages. According to the article “In the following cases, the detainee is not entitled to compensation”:

- 1) Detention is due to the refusal to provide deeds, documents and evidence of innocence.
- 2) With the intention of running away the accused, puts himself in the position of charge suspicion and detention.
- 3) In any direction has unjustly provided grounds for his detention.
- 4) At the same time, he was in detention because of other charges.

In item 1, it can be noted that, for example, the private complainant claims forging of a document by the accused in a specified date, and the expert confirms the accuracy of the complainant’s claim, but the defendant in that time is out of the country and can easily present his passport, but refuses to do so. In the second case, he introduces himself as the perpetrator of the crime instead of the accused, such as to introduce his father as an accused instead of his son, or somebody as a result of alluring or sympathy or fame introduces himself as the perpetrator. In the third case, for example, it can be noted that, due to negligence, he did not prepare an evidence that could later be presented, and his prosecution led to the detention, such as drawing a postdate check, but as he has not got a receipt, he cannot prove that the check was postdated (Note 5). None of these cases have conflicts with the presumption of innocence. Because the presumption of innocence is where there is no evidence against the accused. In the fourth state, it seems that the following situations should be elaborated:

- 1) If, for example, the defendant was detained on charges from the date of 25/3/2016 to 6/6/2016 and he was detained for the second accusation of 25/5/2016, and, for the first charge, he is exonerated, in accordance with article 255, he shall be entitled to claim damages in respect of the period from 25/3/2016 to 24/5/2016.

- 2) In the case of the second accusation, he will have the right to claim damages from the date of the detention of 25/5/2016, if he is exonerated.
- 3) Therefore, only if the date of detention on the two charges is totally concurrent and he is exonerated on one of the charges and is convicted on the second charge, there is no right to claim damages.

The question arises as to whether there is a conflict between the cases mentioned in article 256 and the right to be silent? It seems that this question should be answered in the negative. Because, the legislator has stated in the above assumptions that if the accused refuses to provide an evidence for his benefit, he will not be entitled to claim damages. Whereas, in case of silence the question is that whether the judge can draw adverse inferences of the silence against the accused? Because, it is “difficult to see how drawing adverse inferences from silence somehow damages a special interest in privacy that is uniquely protected by the privilege against self-incrimination” (Roberts, 2010, p. 538). Therefore, there is a difference between the two. It seems that, revision of the penal code, which results in stopping the prosecution, should have the same effect of exoneration.

It seems that the assumptions in article 256 are not essentially included in the meaning of illegal or unjustified detention and not illegal detention. Detention is illegal or unjustified, when the accused has not fault, but in the mentioned cases, it is the fault of the accused which results in detention, and as the court does not exonerate the accused, the discussion of compensation is cannot be plotted.

In the case of police officers, once a warrant is obtained with a showing of probable cause, the officers possess qualified immunity from liability (*Pierson v. Ray*, 386 U.S. 547, 557 (1967)). “Only where the warrant application is so lacking indicia of probable cause as to render official belief in its existence unreasonable, will the shield of immunity be lost” (*Malley v. Briggs*, 475 U.S. 335, 344-45 (1986)). “Additionally, a ‘peace officer’ who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved” (*Pierson*, 386 U.S. at 555.). Given that the threshold of probable cause is low, an action against police officers is unlikely to stand.

In some cases, the primitive court convicts the accused, but the appeal court exonerates him. Such conviction could be called as wrong conviction. “By wrongful conviction, we understand judicial decisions through which a factually innocent person is being found guilty” (Killias, 2015, pp. 57-80).

“During the investigation of a crime and the development of a case, before and during trial, many evidentiary problems surface that lead to a wrongful conviction” (*The Causes of Wrongful Convictions*, 2011 & *Causes and Remedies*, 2017). And “these causes have generally been divided into six categories: eyewitness misidentification; un-validated or improper forensic science; false confessions or admissions; government misconduct; unreliable informants or snitches; and bad lawyering”. These causes of wrongful convictions are all, in some way, linked to the government whether directly by investigative procedures or conduct of prosecutors, or indirectly where the state’s criminal justice system failed to regulate properly. As such, a failure of a state run criminal justice system that results in a wrongful conviction that leads to wrongful imprisonment supports the idea that the state should

accept responsibility and compensate those wronged (Shaw, 2010-2011, p. 596). In fact, “the criminal justice system should pay special attention to the fate of the innocents. Because, Man is not immune from making error in the acts of justice and the greatness of the justice system is that after taking all the necessary measures to prevent the error, compensate for the innocents” (Ashouri, 1974, pp. 30-47).

4.2.3 In Case of Conviction or Stop of Prosecution

According to article 145 of the Iranian criminal procedure code, “If the possessor of the home, the place or objects under inspection, refuses to open the closed places and objects, the interrogator can order their reopening, but as far as possible, the actions that cause damage should be avoided”.

Note: If material damage is introduced in the implementation of this article, and subject to a definitive decision, the accused is exonerated or the prosecution stops, as well as in cases where the third person impedes the entrance, even if the issue results in the conviction of the accused, the government is liable for compensation, unless the interrogator or other law enforcement officers guilt is found, which the state will compensate and refer to the interrogator and the guilty agents. Note of article 145 provides exonerees with a basis to seek compensation from the agencies they feel are responsible for their damage. Essentially, this Note allows exonerees to file suit against any person who, acting under color of law, damages a person of a right. The traditional definition of acting under color of law that the defendant exercised power possessed by virtue of law and made possible only because the wrongdoer is clothed with the authority of law.

Employment by the state is generally sufficient to render the defendant a state actor. Further, it is firmly established that when a defendant abuses the position given to him, he acts under color of law. The primary parties that a plaintiff generally chooses to sue are the police and prosecutors that were responsible for the investigation and trial of the case. However, if a plaintiff is able to show that they were deprived of a constitutional right by police officers or prosecutors, they must overcome the hurdles of qualified and absolute immunity.

Notwithstanding, regarding this article the following points should be considered:

- 1) The rule of this article is not compatible with the principles of civil liability in terms of requiring the state to compensate for damages, because the refusal of the accused or third parties causes damage and it is not a fault of the agents of the state. As, the government, essentially, will only be liable for compensation if the fault of the law enforcements result in damage. Since the accused or third parties are required to comply with the decision of the judicial authority and should not be able to get compensation for damages despite the disregard of the decision of the judicial authority or the legislator, and in particular, in the case of third parties who are the source of the loss of his own refusal, there is no justification for compensation from the government.
- 2) There is no justification to compensate for the accused by government in case of exoneration because of not having mens rea. Because the accused has committed, but his mens rea is not met, and in other cases like stopping the prosecution (when the act is not a crime, or when there is not enough evidence against the accused or when there is no evidence) the base of obligation to compensate is to

exercise sovereignty by government.

3) In cases mentioned in article 13 of the criminal procedure code like death of the accused, his insanity, forgiving by the complainant, lapse of time, abolishment of law, Non bis in idem, public amnesty just in case of insanity, death, abolishment of law and Non bis in idem compensation is justified and in other cases there is no justification. Because, if the complainant did not consent or the accused was not subject to amnesty, the file would result in conviction unless it was possible to exonerate the accused in spite of amnesty or consent of the complainant. It even seems to be necessary to distinguish between different states regarding the Non bis in idem:

- a. There is no justification for compensation by government in the assumption that the complainant, with the knowledge of issuing a definitive judgement, lodges the complaint again.
- b. In the assumption in which there are several victims and on the base of lodging a complaint by one of them the court issues a definitive judgement, and according to the rule of non bis in idem denies the second complaint, there is a justification for the compensation by government.

4) The legislator has distinguished between two assumptions of conviction:

- a. If the damage is caused by the act of the accused, the government will not be liable for any damages.
- b. If the damage is not caused by the act of the accused, the government will not be liable for any damages. As a rule, if a person other than the interrogator or other public official is liable for damage, the government will not be liable for any damages.

5) The outcome of the prosecution file may be conviction, exoneration or stopping the prosecution.

Therefore, in all three cases, it should be decided on the basis of the above mentioned assumptions. In the event that the damaged is a third party, he will have the right to compensation, even on the assumption of the conviction of the accused. In the first instance, in the presumption of the stopping the prosecution or when the prosecution office does not regard the act of the accused as a crime, the third-party must be compensated, although it is contrary to the action rule and there is no justification for imposing such a charge on the public treasury, as the act of third party is a crime according to article 607 of the Iranian Islamic penal code ratified in 1996. But on the other hand, given the general rule of the law, the legislator, in spite of the above considerations, has ordered the state to compensate for the damage, and the judge does not have the right to distinguish between different assumptions. As it is told “one who is acquitted or discharged is innocent in the eyes of the law and the sights of the rest of us should not be set any lower. There is a powerful social interest in seeing acquitted persons do no worse than to be restored to the lives they had before they were prosecuted” (Naughton, 2005, p. 165).

4.3 Responsible for Compensation

Depending on the situation, the legislator has required the state or persons to compensate for damages. So, it is necessary to distinguish between two assumptions:

4.3.1 Responsibility of the Government

In accordance with Article 259 of the Code of Criminal Procedure, Compensation for the issue of Article 255 of this Law is the responsibility of the Government and if the detention is due to iniquitous report of

a crime, perjury or the fault of judicial authorities, after compensation, the government can refer to the causer. Therefore, even in the assumption that the state is not responsible for compensation, the legislator has required the government to compensate, and then refer to the responsible persons in the cases which is examined as following.

4.3.2 Responsibility of Persons

Article 259 stipulates the responsibility of the state for compensation, but the rule of the latter part of this article implies that article 255 of the Code deals with cases that judicial authorities have not mistaken (unlawful detention). Iniquitous reporting of a crime can be made by citizens or judicial authorities, or administrative or law enforcement agencies. "This is not to say that law enforcement officers and prosecutors are untrustworthy; most are honest". However, "criminal justice is a human endeavor and the possibility for corruption exists" (Government Misconduct, 2017). It seems that the phrase "iniquitous" should be considered as deliberate assignment of the charge on another, and in fact refers to defamation. The first point that comes to mind is that the legislator knows government officials responsible in case of assigning a crime to others and declares that there is no difference between ordinary citizens and government officials and as a normal citizen can be prosecuted in the case of defamation, government officials will also be prosecuted and they will bear the criminal and civil liability of defamation. The question then arises is that whether the compensation commission, itself, realizes the iniquitous reporting of the crime or whether the detained person first must refer to criminal authorities to prove the iniquitous then the compensation commission can order compensation?

It seems that this question should be answered in the negative and the Compensation Commission can itself realize the iniquitous and order compensation. The reason is that, if we require the citizen to prove the iniquitous and if the compensation is subject to proof of iniquitous by the criminal authority then he will be caught in the courtroom and may not come to an end. On the other hand, the legislator, in article 259, absolutely provides for compensation and in the case of iniquitous assignment of the crime to the accused, has given the government the right to refer to the causer. The other question that arises is that if the criminal authority should obey the decision of compensation commission, in case the accused lodges a complainant against the iniquitous person?

It seems that this question must also be answered negatively. Because, first, the Compensation Commission is essentially a civil commission and we cannot give the verdict of the commission a credit of ruling of the civil judgement on criminal matters. Second, giving the cred of Non Bis in Idem to the commission's verdict is in conflict with the accused right to defense. While the defendant has the right to defense. If we require the Criminal court to obey the commission's decision, the criminal court will have a formality aspect. Suppose that the criminal authority issues summons and after taking security measures, by an indictment sends the file to the court and the court convicts him. Undoubtedly, this process contradicts a fair trial. Therefore, it should be said that the commission's decision can only be a guideline for criminal authority, and cannot be binding on it. Now, the question is that if the accused lodges a complaint against the iniquitous person, which process should the criminal authority take?

It seems that the criminal authority should take a usual process of trial and if finally concludes that the assignment was not iniquitous, must exonerate the accused. In this situation, the government cannot refer to the reporter of the crime and claim for damages paid to the detained detainee.

The same is true of perjury, and the commission can announce the falsehood of martyrdom. To this end, the Commission can summon witnesses and ask questions about the testimony and the source of his information. However, he will not have the right to issue arrest order or even take security measures. Because the commission is not a criminal authority. The witness cannot be summoned as an accused but as information source could be questioned. Most of the testimonies are done by eyewitnesses. It seems that, even if the mistake of eyewitness is not in the concept of perjury, but could be regarded as a base of compensation in case of exoneration. The reason is that “while eyewitness testimony can be valuable to a fact-finder during a trial, research in the area of social science has proven that eyewitness identification can frequently be unreliable” (Eyewitness Misidentification, 2017), and “validity of eyewitness reports depends a great deal on the procedures that are used to obtain the reports” (Wells, 2006, p. 615). There are more deficiencies regarding the testimony of witnesses. “The more complex of the estimator variables includes such factors as a witness’s level of stress, the presence of a weapon, the race of the perpetrator, and a witness’s ability to retain information in the interval between the crime and police interview” (Wells, 2006, p. 615). “By taking steps to reform eyewitness identification procedures, this major cause of wrongful convictions could at the very least limit the frequency of eyewitness misidentification” (Shaw, 2010-2011, p. 598). In order to prevent the false testimony, “during the administration of the lineup, the witness should be warned that the suspect may not be among the participants” (Wells, 2006, p. 629). “A ‘double-blind’ procedure, one in which the neither the administrator nor the witness is aware of who the suspect is, should be used to prevent the possibility of the administrator giving inadvertent clues as to the suspect’s presence” (Wells, 2006, p. 631).

4.4 Retroactivity or Non-Retroactivity of the Law

Another point regarding article 255 and the next articles is the discussion of the possibility or impossibility of claiming damages on the base judgements issued before the entry into force of the law in 21/06/2015. The question is whether individuals who have been detained illegally before the entry into force of this law can benefit from the compensation process provided in this law?

It seems that this question should be answered in the negative, although, essentially there is no difference between such persons and those who are detained illegally after the entry into force of the law. Because in both cases an unjustified factor has caused the loss to the detainee. But, since the law provides for such a right for a period after the entry into force of this law, there will be no right for those individuals who have been illegally arrested before the entry into force of the law.

Another question that can be asked is whether the entire period of detention should take place after the entry into force of the law or is it important to decide (exoneration)?

It seems, considering article 255, the period of detention should begin after the entry into force of the law,

but the negative effect will be that if someone was detained even one day before the law came into force, but the major part of his detention was in the aftermath of the entry into force of the law, excerpt from article 255 and in order to prevent such a problem, the date of decision should be taken into account.

4.5 The Competent Authority for Compensation

Upon release from prison, persons wrongfully convicted have the right of filing a civil rights law suit in the commission provided in article 257.

According to the article 257, “the detainee must submit a claim for compensation to the provincial commission, consisting of three of the judges of the province’s appeal courts, elected by the head of the judiciary, within six months from the date of notification of the definitive decision indicating his innocence. The commission will decide on compensation if the conditions provided in the law are met. In case of refusal of the request, the person can appeal to the commission referred to it in article (258) of this law within twenty days from the date of notification”.

Article 258, in referring to an appeal commission for a decision taken by the provincial commission provides “Reviewing the detainee’s protest takes place at the National Commission for Compensation, consisting of the President of the Supreme Court, or one of his deputies and two of the Supreme Court judges, elected by the head of the judiciary. The decision of the commission is definitive”.

The decision of the provincial commission could be solely by the claimant appealed. But Note of article 342 provides “in claims for compensation subject to article 260 of the code of criminal procedure and article 30 of the law on supervision of the judges behavior ratified in 07/10/2011 and in cases which the blood money should be paid by public treasury, the court must invite the related organization to the trial session to defend the public treasury. The mentioned organization has the right to appeal the decision. Therefore, the government representative can defend public interests by attending at the meeting. For example, the government representative can declare that the claim for compensation has been made out of the moratorium and must be rejected or refer to one of the points mentioned in article 256 or 259 and therefore provide the possibility of reference of the government to the causer of the damage to the public treasury”.

One of the most important points is that the law refers to lapse of time. So, while the lapse of time in civil cases has not been accepted, the legislator has accepted it in claim for compensation in article 257.

4.6 The Enforcement Authority

Article 260 refers to the enforcement authority of the decisions of the compensation commission and provides “In order to pay damages subject to article 255 of this law, a fund is established at the Ministry of Justice, which its budget is financed annually from public budget. The fund is under the auspices of the Minister of Justice and he is responsible to perform the commission’s decisions. Article 512 as a completion of article 255 provides a person who, by virtue of a definite judgement, is acquitted, may, within a maximum of six months from the date of the notification of the judgement, in addition to the monetary compensation, request the primitive court to publish the acquittal judgement on the charge of the judiciary in one of the daily newspapers”.

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Notes

Note 1. Litigation is the indisputable right of everyone, and anyone can go to competent courts to lodge a complaint.

Note 2. Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.

Note 3. Arguing that compensation should expand beyond only monetary compensation, offering a "holistic" program with services including education, vocational training, and medical services.

Note 4. According to article 18 of the Iranian Islamic Penal Code "Ta'zir is a punishment which does not fall under the categories of Hadd, Qisas, or Diya and is determined by law for commission of prohibited acts under Shari'a or violation of state rules". The type, amount, conditions of execution as well as mitigation, suspension, cancellation and other relevant rules of Ta'zir crimes shall be determined by law. In making decisions in Ta'zir crimes, while complying with legal rules, the court shall consider the following issues:

(a) The offender's motivation and his/her mental and psychological conditions when committed the crime.

- (b) Method of committing the crime, extent of a breach of duty and its harmful consequences.
- (c) Conduct of the offender after committing the crime.
- (d) The offender's personal, family, and social background and the effect of the Ta'zir punishment on him/her. In some Ta'zir crimes like having sex with his own wife in Ramadan or removing the hymen of a girl, the punishment has been determined by Sharia.

Note 5. In the Iranian criminal justice system drawing a postdate check is a crime.