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**TÍTULO:** El estado del equilibrio de los enfoques y mecanismos basados en los ciudadanos y en la seguridad para equilibrar estos dos enfoques en la corte revolucionaria islámica de Irán.

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**RESUMEN:** Es importante determinar el estado y alcance de la adhesión a los principios conocidos de un juicio justo, que son puntos esenciales e inevitables. Aunque el código de procedimiento penal de Irán, adoptado en 2013, en relación con las leyes anteriores e influenciado por los derechos humanos y las perspectivas humanitarias, ha intentado equilibrar los enfoques centrados en los ciudadanos y en la seguridad con una mayor atención al respeto por la ciudadanía, todavía hay signos de adoptar un enfoque basado en la seguridad durante el juicio de algunos de los delitos en este tribunal, que han causado problemas y críticas. Este artículo presenta los enfoques de equilibrio: el equilibrio entre los enfoques basados en la seguridad y centrados en los ciudadanos para lograr una audiencia justa.

**PALABRAS CLAVES:** tribunal revolucionario, procedimiento penal, enfoque basado en la seguridad, enfoque basado en los ciudadanos, principios del juicio justo.

**TITLE:** The status of balance of citizen-based and security-based approaches and mechanisms for balancing these two approaches in the Islamic revolutionary court of Iran.

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**ABSTRACT:** It is important to determine the status and extent of adherence to known principles of fair trial, that are essential and inevitable points. Although Iran's code of Criminal Procedure, adopted in 2013, in relation to former laws and influenced by human rights and humanitarian perspectives, has attempted to balance citizen-centered and security-centered approaches with increased attention to respect for citizenship, but there are still signs of adopting security-based approach during the trial of some of the crimes in this court that have caused problems and criticisms. Therefore, this article will attempt to possibly present the balancing approaches: balance among security-based and citizen-centered approaches in achieving fair and just hearing.

**KEY WORDS:** revolutionary court, criminal procedure, Security-based approach, Citizen-based approach, Principles of fair trial.

**INTRODUCTION.**

The Revolutionary court is one of the recognized criminal courts in the Iranian penal system applying the special rules, severe penalties and more strictness toward criminals in which it has always been criticized for doing and applying its rules and regulations.

In the course of the proceedings of this court and under the influence of the security-oriented criminal policy and the security-centered approach, there is a dominating particular pattern of thinking in the area of fighting crime and maintaining social order and security, and the court investigates these cases with some items like temporary detention orders in less urgent cases, severity of the punishment, the non-compliance with the guaranteeing principles of the defendants' rights and disregarding the principles of dignity of human, and the precise non-compliance with the standards of fair trial.

In fact, the restriction of the defendants' use of defense rights is a prominent manifestation of security-based criminal policy, which is always high likely to happen in the proceedings of the Special Revolutionary Court, whereby applying principles such as the principle of trial openness, the principle of acquittal, the right to have a lawyer, etc., are restricted. However, the correct and proper use of the defendants' defense rights will balance and achieve the principle of equality of arms in criminal proceedings. Therefore, in order to strike a balance in the proceedings, the fair and complete implementation of the principles of fair trial and the necessity to observe the rights of defendants in criminal proceedings, especially during the proceedings of the Revolutionary Court, and to prevent restrictions on these principles and rights under various pretexts in which are important features and manifestations of citizen-centered criminal policy and a citizen-centered approach, are necessary.

## **DEVELOPMENT.**

### **Issue One: The level of adherence to the principles governing the citizen-centered approach in the Revolutionary Court proceedings.**

It is inevitable to maintain the principles of fair and equitable trial to support a citizen-centered approach and to secure the rights of both parties in a particular case. In this article, by examining the principles and features of the fair trial while expressing these principles and their place in Iranian criminal law, we will state the status and extent of adherence to these principles in Revolutionary

Court hearings and the cases that seek a security-based approach, the implementation of these principles, which have faced some restrictions.

Paragraph 1: The principle of acquittal (presumption of innocence of the accused).

The principle of acquittal or presumption of innocence is one of the most fundamental principles governing fair and equitable justice in modern and progressive criminal justice systems and protects the rights of citizens in the institutions of criminal justice. The principle of acquittal in the judicial dimension means that innocence must be established on the basis of one's innocence until a person has been found guilty in a competent and lawful court (Vakil-Askari, 1387: 136). According this principle, that the accused is the same offender, is wrong and must be proven and the main and true principle is on freedom and acquittal of suspect and since we regard the accused as innocent of all the rights that a free person has, the accused person should be given (Varvaie, et al., 2014).

This important principle is explicitly stated in the Iran's constitution and no one is found guilty of the law until proven guilty in a competent and qualified court and this principle is on acquittal. Despite the defendant's innocence principle, this is as prosecution's duty to prove the charges against him beyond any reasonable doubt, but in the Revolutionary Courts and Courts and in some jurisdictions of this court, such as crimes against country's security, drug offenses, etc. these principles face limitations and exceptions, which we will discuss below.

Before expressing the limitations of the principle of acquittal in its form, which are often derived from a security-oriented approach, it is not useful to deal with the extent to which the principle of acquittal is respected in the jurisdiction of crimes under the jurisdiction of the Revolutionary Court. In some crimes under the jurisdiction of this court, especially in the case of crimes against domestic and foreign security, due to importance of these crimes, the principle of acquittal and the conviction of the offender have been distorted if the defendant is suspected of committing a crime that usually

results from the existence of certain laws and regulations. This accusation precedes the principle of acquittal.

Like Article 499 of Islamic penal law 75 where the legislator in *actus reus* explicitly places the principle on the accused conviction unless the accused proves his innocence by proving his ignorance (Jafari, 2015: 70). In this course, the amendment to the Law on combating Narcotics and adding some articles to it can be referred ,including some rules about carrying the load, the prove of legislator reason in remark 1 of article 8 of abovementioned rule in order to establish the *actus reus*, replaced objective regulation with subjective regulation and by imposing this regulation and standard which makes it easier to prove and establish convict, it is accused that contrary to the principle of acquittal has to prove his innocence.

As remarked in the remark 1 of the abovementioned article legislator by inserting the phrase "whether or not to intend to distribute or sell domestically" assumes that, according to the way and quality of the carriage of drugs (objective regulation), carriage has been for distribution within the country, but if the defendant proves that the drug was not for distribution within the country, the death penalty will be reduced to life imprisonment and will be sentenced to "severe punishment" if he is not able to prove non-distribution domestically to the court.

As remarked, and considering the fact that these crimes are dealt with in the Revolutionary Court as a separate court by itself, it raises the question and doubt of non-compliance with ordinary criminal guarantees pertinent to usual crimes. Such codifications by the legislator such as article 499 of Islamic penal law 75, remark 1 of article 8 of the Anti-Narcotics Act or even article 121 of Islamic penal law 92 which excludes crimes such as belligerence and corruption on earth out of coverage of interpretation in favor of the defendant are compiled under a security-oriented approach and finally, it undermines the principle of acquittal as one of the fundamental principles for the defense of defendants' rights and non-compliance with the principles of more fair and just trial.

Although the Criminal Procedure Code of 2013 has made significant progress in respecting the rights of defendants in comparison to former laws, there are still cases in which while investigating to some crimes under the jurisdiction of the Revolutionary Court, such as crimes against domestic and foreign security, the recognized and emphasized principles for the defendants' defense rights are constrained. Among the cases that somehow distort the principle of acquittal and its effects, the latter part of Article 65 of penal trial law should be remarked in which according to this article in non-pardonable offenses if a person announces a crime and he wasn't witnesses, the principle is that prosecution cannot be pursued by mere proclamation, but in a proceeding that is based on security-based thinking in relation to crimes against domestic and foreign security, the mere disclosure by third parties, even if they themselves are not witnesses is enough scope to pursue prosecution; at first glance, this may be justified that legislator pass this law due to the importance of crimes against security and the dangers that may threaten citizens and society, but given the generality and pervasiveness of the concepts of crimes against domestic and foreign security, this act is inconsistent with the principle of acquittal and the presumption of innocence of the accused and is more appropriate to formulate the abovementioned article in order to respect and support all people and their rights and freedom.

Paragraph (d) of article 180 of the Code of Criminal Procedure, which considers the charge of committing crimes against internal and external security as a case of invocation without summons, in view of the former reasons, is of another case conflicting with the presumption of innocence and the principle of acquittal. Because the totality of some articles about domestic and foreign anti-security crimes that are being tried in the Revolutionary Court, such as Article 500 of Islamic penal law 75, with general terms such as "propaganda in any way", which makes it impossible to distinguish and differentiate Committing a criminal act from a mere statement about the right to freedom of expression, provides the basis for undermining the principle of acquittal.

**Paragraph 2: The principle of openness of proceedings.**

One of the important features of criminal proceedings is its openness, according to which the courts must openly prosecute the accused charges. Trials Public openness is a form of public scrutiny to consider the quality of justice implementation, defendant's defense of rights and protection of the interests of Society in pursuit of criminals. (Mawzen Zadegan, 2000: 33) By regarding this feature, the presence and supervision of individuals during the trial is free, also the mass media can provide reports and news to public opinion during trials, and thus, the publicity and openness of the trials makes people able to attend the hearings and evaluate their fairness in public arbitration.

In the Iranian law system, openness of the proceedings is a fundamental component in the constitution as well as ordinary law, such as the Code of Criminal Procedure has been predicted, and in order to guarantee a fair and just trial the principle has been set up on fair and open trial and in camera proceedings is possible only in exceptional cases and depending on specific circumstances and conditions.

According to Article 352 of the Code of Criminal Procedure, the courts may declare that the courts are not open to the public after the prosecutor expresses his opinion on family matters and offenses contrary to the good faith or morality of the court, as well as cases where the openness of the proceedings is detrimental to public safety or religious or ethnic sentiments, but the exceptions to the publicity of the proceedings referred to in this article, especially the term disruptive public security or religious or ethnic sentiment that arises more in relation to domestic crimes within the jurisdiction of the Revolutionary Court; they have such general and inclusive meaningfulness, which makes us go to them in order to establish a security-based approach and the position of principle and the exception change to keep public security and stop chaos in public safety, and thus there will be a kind of disruption in the fair trial process that has always been emphasized by a citizen-centered approach.

Another point to be remarked in court hearings is related to the publication of media proceedings, and since in today's mass media societies are more widely spread than ever before in public opinion and play an important role in public awareness one can claim that to comply with the principle of publicity in the true sense, the presence and attending the media and the press in the courts, and the publication of public hearings in accordance with legal requirements is mandatory.

Concerning the revolutionary court, given the jurisdiction of this court toward the serious and important crimes that often haunt and catch the minds of the public and cause the public, as a public morality and conscience, to wait impatiently for the outcome of the proceedings, it is appropriate and mandatory for the media, in order to avoid any confusion in the public mind and to clear up these confusions, to inform the public of the proceedings and reports of the case in accordance with the relevant laws and regulations by allowing them to attend public hearings of revolutionary court which in this regard, Article 353 of the Code of penal procedure has taken into consideration this point determining the terms and conditions of the media and the publicity and openness of the proceeding, and this legislator's act to respect public opinion and facilitate the way to know and hear the proceeding is very appreciated, but it is also mandatory to avoid any unnecessary and insensible media prohibition in some public hearings, especially in the Revolutionary Court, and that the law must be properly and fully implemented in order to respect the law and respect for citizens' rights.

**Paragraph 3: The principle of the right to have a lawyer.**

The most appropriate solution to a lawsuit is reached in an independent and impartial court through fair and equitable proceedings and to establish suitable judicial and court security it is necessary to keep some minimum guarantees.

One of the most important guarantees is the principle of the right to have a lawyer. This right means to be informed of having the right to have a lawyer, the right to have legal assistance of a voluntary



counsel or the assistance of a court appointed lawyer; in fact, those who are subject to criminal proceedings must be informed of the right to self-defense by a lawyer and for the reason of the importance, integrity and more trust between the defendant and his lawyer the priority will be with the voluntary counsel.

Like other legal systems in the Iranian legal system, the principle of the right to have a lawyer is enshrined in the constitution as well as ordinary laws such as the Code of Criminal Procedure. In this regard, the right to have a lawyer for the parties to the lawsuit has been emphasized in Article 35 of the Constitution of the Islamic Republic of Iran and, based on citizen-centered thinking, the constitution as the highest law guarantees the discretion and freedom of citizens to choose their lawyers without any restrictions.

The Code of Criminal Procedure also takes into account the important and influential role of the presence of a lawyer in holding a fair hearing; in a positive step, desires to attend a lawyer from the very first moments of accused detention to the end of hearing procedures in which in continue and in the context of our discussion, we examine the extent to which the principle of the right to have a lawyer is adhered to in Revolutionary Court hearings, and also we scrutinize the legal and procedural provisions and restrictions that often stem from a security-based approach that preclude the presence of defense counsel at any stage of the criminal trial process like the preliminary investigation phase in the Revolutionary Courts and Courts and in some of the crimes that fall under the jurisdiction of this court, such as crimes against domestic or foreign security.

Article 48 of the Code of Criminal Procedure stipulates that: “Upon commencement of observation and probation, the accused may request the presence of a lawyer, the lawyer shall meet with the person under observation with due regard to the confidentiality of investigations and negotiations, and the lawyer may at the end of the meeting with the defendant, which should be no more than an hour, shall submit written observations to the case file. For the first time, the permission is given to

lawyer to attend in police investigations explicitly. But the presence of lawyer which occurs with the defendant's request is limited to meeting the defendant and mentioning in writing such as the non-offense, its non-appearance, lack necessity to arrest the accused and so, is at the end of this meeting not to defend the defendant or even attend the interrogation (Khaleghi, Pishin: 80).

Given the increasing inadequacy of preliminary investigations on the one hand, and the inability of many defendants to provide adequate defense in the prosecution on the other hand, and to prevent their rights being undermined and to guarantee the defendants' rights of defense, the defense attorney's attendance in the preliminary investigations is of high importance and significance (Ashuri, 1993: 57). Article 190 of the Code of Criminal Procedure stipulates: "The accused may have a lawyer with him at the preliminary investigation stage. This right must be communicated to the accused before the investigator begins the investigation, but despite the foreseeable provision of the article and its remarks, the legislature in the amended remark to Article 48 of the penal procedure law hurriedly imposed an unlawful restriction on the right to freely choose a lawyer in a way that in the crime mentioned in this remark the accused in the preliminary investigation phase can only select one of his or her attorneys from among the official lawyers of the judiciary approved by the Head of the Judiciary; which has made this remark subject to much criticism.

Among the criticisms raised by the opponents of this remark is that because the acceptance of a verdict and a fair hearing requires an impartial and independent hearing; Choosing their own lawyers from among the official lawyers of the judiciary approved by the head of the judiciary practically undermines the independence of the law-making body as the most important feature that guarantees legal representation and ultimately justice and finally deteriorating the image of the justice system and undermining the rights of litigants, especially defendants.

Another criticism on this remark is the ambiguity as to why and on what basis in the amended remark gave the right to freedom of choice of counsel to the chief of the judiciary, who is one of the parties to the trial, to be able to appoint anyone who is a lawyer to serve in such crimes. Slow is another criticism of this remark. This is undoubtedly emanating from a security-centered perspective and approach of legislator impeding the fair and just trial.

**Paragraph 4: Investigation in reasonable deadline.**

Investigating the defendant's accusation within a reasonable time is an important condition for enjoying the right to a fair trial and one of the most important criteria for a fair and just trial. In fact, the sovereignty of the acquittal principle and presumption of defendant's innocence requires that the court should ultimately consider the charge or charges allegedly committed by the defendant in a reasonable time and in the light of persuasive evidence taking no side of any parties in a claim. If, for whatever reason, even the legal causes of the proceedings become abnormal and unreasonable, this would ultimately undermine the fairness of the case, even though the verdict was ultimately in favor of the holder (Jouybari & Akbari, 2009: 65).

In addition to international standards, that have required the enjoyment of sufficient time to prepare a defense for all defendants and to investigate their accusation without undue delay, the constitution of many countries has predicted the right of a defendant to be tried within a reasonable time (Zaraat & Ahmadi, 2014: 120). In this respect, Article 32 of the Constitution of the Islamic Republic of Iran also stipulates: "No one shall be arrested except in the order and command provided for by law. In case of detention, the subject of the charge should be notified in writing immediately to the accused". It has spoken of preparing the trial of detained persons as soon as possible.

Despite the importance and impact of observing a reasonable time limit to guarantee defendants' rights in criminal proceedings, especially during criminal proceedings in their particular sense involving criminal proceedings, this principle is subject to limitations and objections in the Revolutionary Court. These limitations can include the fact that the court sometimes in investigating some crimes under its authority ,sometimes on the pretext of providing security and combating criminals of some crimes such as crimes against domestic or foreign security, by expediting the investigation and ignoring the known rights of the accused, in fact takes into account an unfinished notion and of course common, which is the "shortest possible timeframe of investigation" and violates these rights and departs from the normal and ordinary procedure and with an approach based on the security-based thinking all court and its staff efforts will direct to quick investigation and accused deposition to answer public minds and set up order and security .Although these actions by the pretext of providing security repels the sense of insecurity in people in short-term but in the long run, the effects of such actions not only not do bring the stable security but it will also cause insecurity if they are accompanied with breaching the known principles and guaranteeing fair trial.

On the other hand, and in relation to other crimes being under the extensive jurisdiction of the Internal Revolutionary Court, due to penal inflation and lack of sufficient supervision, the trial may not be conducted expeditiously, but for an unconventional period of time it will be delayed and people will not be aware of their true charges for a long time.

**Paragraph 5: Right to appeal.**

Appeal is a way in which judicial verdicts review is made possible, which means re-judging what has been originally judged, that is, reviewing lower court proceedings. In fact, the statutory exercise of the right to appeal makes it possible to clarify the truth and to implement the justice more and more. Appeal right is an inevitable necessity today and there is no legal system to turn away from that. This

right is considered as part of the fair trial process for the protection of human dignity and respect for human right, and has therefore been a subject of concern at various national and international levels and in various legal and judicial bodies. In some international documents and treaties, this right has been explicitly emphasized. The Criminal Procedure Code of 2013, in line with international law and contrary to Article 232 of the Code of penal law in 1999, which recognized the principle of certainty in sentences and verdicts, in a positive manner and in a citizen-centered approach based on being two-degree principle of investigation, the principle is based on the uncertainty of the sentences and verdicts and the ability to appeal.

One of the positive measures taken to ensure more appropriate use of the right of appeal as one of the criteria for a fair trial is the formulation of article 458 of the Code of Criminal Procedure, 2013, whereby, contrary to the former law, the principle of The "prohibition of aggravated punishment at the appeal stage" has been placed and the aggravated punishment at the appeal stage is an exceptional point and is subject to this fact that, at first, contrary to the statutory directions the appointed punishment of the lower court's ruling is less than the statutory minimum, and second, the non-compliance of first condition will be reviewed by the prosecutor or appealed by the plaintiff.

Another case that can be mentioned as an example of the affirmative action of the law in question, is to standardize the "legal punishment" to determine the jurisdiction of the authority to examine pre-final sentences in accordance with Articles 426 and 428 of the abovementioned act, that by regarding the case or the appellate court or the Supreme Court, in which in former law, the legislator had determined the criterion of the jurisdiction of appeal with regard to the authority issuing the preliminary injunction and not paying attention to the penalty, and thus if the court of first instance was a revolutionary court, the appellate court, no matter what the punishment was appointed in the Special Revolutionary Court, was the Court of Appeal of that state, even if the defendants in the Revolutionary Court, were sentenced to death, the reference to appeal his verdict was still that

abovementioned court. On the other hand, given that all the verdicts of the Criminal Court of state were appealable by the Supreme Court, this reference was, for example, to the two-year sentence of prison was the appeals authority, and, as remarked, it turns out that these excesses would in practice undermine the convicts' defense rights.

Notwithstanding the positive steps taken to make more effective use of the right of appeal, it is influenced by the security-based approach and in relation to some crimes within the jurisdiction of the Revolutionary Court such as drug-related offenses and some offenses under Article 303 (d) of the penal procedure law has been subject to jurisdiction such as "economic distractors", and by paying attention to the specific circumstances of society, the application of regulations such as an appeal to such offenses is subject to restrictions.

Appeal provisions concerning drug-related offenses were enacted in accordance with Article 32 of the Anti-Narcotics Act passed in 2007, with amendments and supplements, prior to the ratification of the 2013 Code of criminal law and the formulation of Article 570 of this Code and by considering the severe impacts of drugs on health, development, community security and as a threat to national security, a strict criminal policy has been adopted by domination of security-based approach in the process of drafting and enacting this law and pursuant to Article 32 of the said Act, except for executions, drug-related offenses were definitive and mandatory, and death sentences were approved by the head of the supreme court or country's general attorney, which were final and binding.

As remarked and given that an appeal is a right whereby a "convicted" person may, in the first instance, request a higher court to review and reinvestigate his sentence, foreseeing the Article 32 of the abovementioned Act, In fact, it is only a task for the authorities to review and affirm the case because of the severity of the punishment envisaged, it has no correspondence with the concept of "appeal" as one of the safeguards for fair trial and defendants and convicts rights. The truth is that the verdicts on drug crimes were definitive, and such legislation was unconscionable, regardless of crime

and individual and social circumstances, without an expert in the principles of fair and equitable justice. In fact, many of the unappeasable verdicts issued by the Special Revolutionary Court against drugs such as long prison terms (life imprisonment, long imprisonment), heavy financial penalties, confiscation of property, etc., undermine the defendants' defense rights and eliminated the remedies for judicial errors, and because of severity of punishments and the jurisdiction of the Revolutionary Court appeal for some verdicts related to drugs is highly important.

Finally, these factors and pre-pointed criticisms have led to a positive and forward trend in the adoption of the Criminal Procedure Code of 2013 adopted by modifying the security-based approach and paying more attention to the criteria of a citizen-centric approach and to balancing between these two approaches, in dealing with drug-related crimes, Article 32 of the Anti-Narcotics Act, which was undoubtedly one of the worst articles in the law violating one of the defendants' indisputable rights, namely the right to appeal against the offenses that require the most severe punishment was properly modified and reproduced by Article 570 of the criminal procedure law and led to appeal on drug offenses to be as one of the crimes under the jurisdiction of the Revolutionary Court following general rules related to Appeal in the Code of Criminal Procedure.

### **Issue Two: Mechanisms for balancing Security-Based and Citizen-Oriented approaches in Revolutionary Court trials.**

Although the Code of Criminal Procedure enacted in 2013 over previous laws and influenced by human rights and humanitarian perspectives, efforts to balance security-centered and citizen-centered approaches have increasingly focused on respecting citizenship rights, but still in some of the crimes investigation procedure, there are signs of a dominant security-centric approach that has caused problems and criticism. In this regard, and considering the important role and importance of the balance between security-oriented approaches and citizen-centered approaches to a fair and just trial,

I would like to discuss the mechanisms for establishing this balance in the Islamic Revolutionary Court of Iran as much as possible.

1. Since the investigation of crimes in the Revolutionary Court as a special court by itself raises the question of non-compliance with the guarantees of fair trial proceedings, the formulation of laws such as Article 499 of Islamic penal law 75, remark 1 to Article 8 of the Anti-Narcotics Act or even Article 121 of Islamic penal law 92 that prioritizes the offense than acquittal and distorts the presumption of acquittal should be amended and in formulating essential laws which are regarded as means in courts' procedures they must be based on the principle of acquittal or the presumption of innocence of people, and according to emphasis of constitution articles like article 37, as the supreme law among the laws of the Iranian legal system, it prevented from distorting and disregarding this important principle on the pretext of providing security and vague justifications and for balancing citizen-centered and security-based approaches it is necessary for the legislator to formulate the substantive laws more closely and in harmony with the principles and procedures of the proceedings and the observance of the recognized principles of criminal law.
2. Despite the positive actions taken for the defendants in respect of their former rights under the Criminal Procedure Code of 2013, but in the course of investigating some domestic crimes within the jurisdiction of the Revolutionary Court, such as crimes against domestic or foreign security, by adopting articles such as Article 65, Paragraph "T" of Article 180, which considers being accused of committing crimes against domestic and foreign security as a matter of conviction without summons; and Article 191 of criminal procedure law 92 - Principles recognized and affirmed to Guarantee defense rights of defendants, such as the principle of acquittal and its effects, have been distorted or restricted. However, in view of the principle of acquittal, it is appropriate that the accused be provided with all the means necessary to defend himself, and that such a restriction would be a fatal blow in the preliminary investigation phase given the importance of



this stage and its effects on the proceedings for the defendants' rights, and in order to balance citizen-centric and security approaches and protect all individuals and respect their rights and freedoms, such restrictions should be avoided in the well-known principles of criminal justice. And for example in Article 65 of the criminal code law, in relation to the declaration of offenses against internal or external security in cases where third parties themselves have not witnessed the case, to avoid prosecution of false and unreasonable reports, there is a requirement that there is some evidence and proofs on true claim of denunciatio, has the right to initiate prosecution.

3. Although openness of investigation to the public is a right for every individual in the community but this right is restricted for some reasons. Although the exception to the openness of the proceedings is not limited to the Iranian penal system and the countries that attack our criminal justice system for reasons of non-public hearings and non-compliance with fair trials, the possibility of holding non-public trials in their own laws is anticipated and used and, as part of Article 14 of the International Covenant on Civil and Political Rights, in the areas of good ethics, public order, national security in a democratic society, the interests of private life, the interests of the judiciary in terms of specific qualifications as exceptions to Its non-public of the trials has been aforementioned, but we should be careful that this limitation should have a legal permission and license, and the principle of trials openness shouldn't be abandoned for some mere ambiguous reasons like possibility of riot and chaos which is more likely happen in revolutionary court than others. In fact, in order to balance among citizen-centered and security-oriented approaches and to achieve the goals and concerns of both approaches, according to explicit wording of Article 352 of penal law and beyond of it Article 165 of the Constitution, the non-openness of the proceedings must be exceptional and limited to some expressed issues in law, and revolutionary court should not change the place of principle and exceptions by false pretexts without legal directions. In other words, with greater clarification of the law, exceptions should be made precisely and specifically

when the hearings are held, thereby preventing widespread and tasteful interpretations of the law and making the judiciary more independent not being influenced by political or factional currents, it can better enforce and adhere to the principle of openness.

4. In our legal system, as in other legal systems, the principle of the right to have a lawyer is enshrined in the Constitution as well as in ordinary law. Therefore, in order to adhere to the principles of the constitution as the underlying law of the Iranian legal system and to be inspired by progressive and noble principles such as the ninth principle of the constitution and its high capacity lies in the principle emphasizing the "individual freedoms and state independence", legal freedoms need to be respected, and issues such as the Amendment Remark to Article 48 of the penal law, which restrict the free choice of counsel as one of the most important forms of formal law for access to justice; there has been a lot of criticism to come because of the selection of attorneys from the official justice lawyers approved by the chief. The judiciary, as stated in the above remark, is in no way appropriate and justified and in order to balance and reduce the criticisms that come with the hurried amendment of this remark to the Code of Criminal Procedure ,it is necessary to eliminate this remark, and if there is a need to restrict the procedural and recognized international law rights, such as the right to access to a lawyer, in the light of the importance of keeping public security and certain crimes, such as crimes against domestic or foreign security, and this restriction be imposed on limited and known documents in international law, such as having the right to have lawyer, this limitation should be as possible limited, temporary and in accordance with legal requirements.
5. Considering the importance of due process and its role in safeguarding the rights of the parties, in particular the defendants, in the Criminal Procedure Code, it has been tried to consider this principle as one of the principles of fair and equitable proceedings, but it turned out that the legislator was more concerned with one aspect of compliance with the reasonable deadline, that

is, the shortest possible time, while the reasonable time differs from the expedited hearing, and the time is in fact relative and differs from case to case depending on the circumstances and complexities of each case. For these reasons, in order to better respect the principle of due diligence and pay attention to the criteria of a citizen-centered approach, speedy and unrestricted hearings should be avoided, especially in cases where courts are constituted in a special and specific manner. Given the importance of the presumption of innocence and acceptance of the principle of liberty, in addition to dealing with the accused without undue delay and promptly, the defendant must have ample opportunity to gather evidence and defend him. In other words, there should be a balance between the two types of rights of the accused, namely the right to use the facilities and sufficient time to make a proper defense on the basis of the presumption of acquittal and the investigating him without undue delay, equilibrium, and the legislator should anticipate the speed of proceedings at the same time accompanied with precision.

6. In addition to the positive aspect of the wording of Article 458 of the Code of Criminal Procedure in mandating and complying with the rule prohibiting the intensification of the punishment of imprisonment or the provision of remedial and disciplinary measures in appeal stage in accordance with the principles of fair trial and its description in previous part passed; the prediction that the increase in penalties at the appeal stage is limited to determining the minimum penalty prescribed by law, after we understood that the lower court has ruled less than the minimum legal penalty, it does not seem justified, and as the excesses in the security-based approach undermine the defendant's rights, in this case, too, the indictment is not very defensible and deserves to balance between the rights of the litigants and the avoidance of excesses in support of the citizen-centered approach, when the punishment imposed by the first court ruling is contrary to the law, less than the minimum required by law to have the appeal of the plaintiff or prosecutor represented as a representative of the community and the claimant; the appellate court shall have sufficient

authority to determine the appropriate punishment for the accused and shall not be bound to determine the minimum penalty prescribed by law.

## **CONCLUSIONS.**

The mere emphasis on either citizen-centered or security -centered approaches alone, without compromising the other, will lead to an imbalance in the exercise of the rights of those charged with crimes under the jurisdiction of the Revolutionary Court on the one hand and the rights of the community and the victim on the other. For these reasons, it is necessary to balance each of the aforementioned approaches with an intermediate approach and to emphasize their interaction and equilibrium by negating the primacy on the other.

Given the importance of this issue in securing the rights of litigants in Revolutionary Court proceedings and the important role that balance plays in achieving a fair and equitable hearing, this article attempts to impose restrictions on the principles of safeguarding the rights of defendants and Deviation from the principles of dignity in the proceedings of the Revolutionary Court, such as that which is contrary to the presumption of innocence of the accused and the principle of acquittal in the court, despite the fact that the prosecution is seeking to prove the charges against the accused beyond any reasonable doubt, but in the Revolutionary Courts and Courts and in some crimes under the jurisdiction of this Court, like offenses against security and drug offenses, etc., this principle faces limitations and exceptions, or restrictions on the right to freely choose, or an accused can only choose his or her attorneys from among the official judicial lawyers approved by the head of the judiciary, which has caused widespread criticism, and, as far as possible, provided solutions and mechanisms to balance citizen-centered and security-centered approaches and prevent restrictions.

In the application of the principles of fair trial, including this in the formulation of substantive laws, which are considered as instruments of work in court proceedings, we place the principle of acquittal and the presumption of innocence to prevent distorting and non-compliance of this principle on the pretext of providing security and vague justifications, or in relation to the right to access to a lawyer and the restrictions imposed on him, such as those set forth in remark 2 of Article 2 of the penal law, shall be deleted and, if maintained in the public interest, given the importance and sensitivity of some crimes, such as crimes against foreign or domestic security, this limitation should be as possible limited, temporary and in accordance with legal requirements.

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