

Country Visit Working Group on Arbitrary Detention Report E/CN.4/2004/3/Add.2 para 65(4)

Full recommendation:

4. *On the right to due process.* Three points should be borne in mind, in the following order of immediacy:

- *The immunity of counsel in pleading cases must be reaffirmed and expressly guaranteed in a legislative instrument formulated in cooperation with representatives of the Bar;*
- *The active involvement of counsel must be provided for, whatever the nature of the case, starting with the custody or, the very least, the investigation phase, throughout the trial and in the appeals stage;*
- *Access to legal aid must be made more effective.*

Assessment using Impact Iran human rights indicators¹

A. Immunity of counsel in pleading cases must be reaffirmed and expressly guaranteed in a legislative instrument formulated in cooperation with representatives of the Bar

The 1955 Law for the Independence of Lawyers established the independence of the Bar Association and granted lawyers with immunity from prosecution for their work.² However, following its disestablishment after the Iranian Revolution and its subsequent reinstatement, the Bar Association has been put under increased Judiciary's governance.³ Additionally, the Iranian Government has been repeatedly attempting to amend bylaws of the Bar Association and reduce the independence of lawyers.^{4 5 6} Most recently, a draft bill presented in May 2020 would replace the Bar Association with the "Supreme Council of the Coordination of Lawyers' Affairs", which would be composed of Government appointed judiciaries.⁷ The bill was drafted without the involvement of the Bar Association.

The Judiciary is in charge of investigating the qualification of lawyers and confirming the issuance of licenses to newly qualified lawyers.⁸ In November 2020, the Judiciary issued a

¹ CCPR.9.2.S.1; CCPR.9.3.S.1
CCPR.9.2.P.1; CCPR.9.3.P.1
CCPR.9.2.O.3; CCPR.9.2.O.4

² Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/97>

³ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/iranian-bar-associations-struggle-for-independence/>

⁴ Report of the Special Rapporteur on the situation of human rights in Iran, May 2015, <https://undocs.org/A/HRC/28/70>

⁵ Human Rights Watch, <https://www.hrw.org/news/2009/07/16/iran-halt-moves-curtail-lawyers>

⁶ Lawyers for Lawyers, <https://lawyersforlawyers.org/en/iran-lawyers-call-upon-iranian-authorities-to-revoke-controversial-bill/>

⁷ Radio Farda, <https://en.radiofarda.com/a/more-than-12-000-lawyers-in-iran-reject-move-to-dismantle-bar-association/30590110.html>

⁸ The Supreme Disciplinary Court for Judges has the authority to vet lawyers. <https://rc.majlis.ir/fa/law/show/92825>

directive allowing it to investigate complaints against lawyers instead of the Bar Association's own disciplinary tribunal.⁹

In 2000, the Judiciary established the General Office for the Supervision of Lawyers, Experts, Family Counselors and Official Translators in accordance with Article 187 of the Law of the Third Economic, Social and Cultural Development Plan.¹⁰ In October 2020, Mohammad Mosaddegh, the Iranian judiciary's deputy chief for legal and parliamentary affairs, announced the creation of a judicial body to supervise lawyers, the General Office for the Supervision of Lawyers, Experts, Family Counselors and Official Translators, under the responsibility of his Office.^{11 12}

In 2014, President Rouhani reportedly stated that “a lawyer should be immune from any prosecution for carrying out its professional duty, and the investigative authority for the lawyers' professional issues is the Bar Association”.¹³ Yet, lawyers have been reportedly prosecuted for representing prisoners of conscience or political and “security” prisoners.¹⁴ Human rights lawyers defending human rights defenders have been reportedly harassed, arrested and detained in the Islamic Republic of Iran.^{15 16 17 18}

In its General Comment 32 of Article 14 the Human Rights Committee explicitly stipulates that lawyers “should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.”¹⁹ Additionally, the UN Basic Principles on the Role of Lawyers provide that “lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.”²⁰ Despite these international standards, immunity of counsel in pleading cases has not been reaffirmed under Iranian legislation, if not actively undermined. Further, the mere existence of the Bar Association and with it the -already limited-²¹ independence of lawyers is currently under threat.²²

⁹ Vokalapress, <https://vokalapress.ir/?p=7708>

¹⁰ Parliament of the Islamic Republic of Iran, <https://rc.majlis.ir/fa/law/show/93301>

¹¹ Tabnak News, <https://bit.ly/2MNjDOj>

¹² Center for Human Rights in Iran, <https://iranhumanrights.org/2020/12/new-directive-allows-iranian-judiciary-to-control-lawyers-through-disciplinary-body/>

¹³ Lawyers for lawyers, <https://lawyersforlawyers.org/wp-content/uploads/Oral-statement-Iran-L4L-LRWC-19-3-2015.pdf>; Meeting the members of the board of Directors of Bar Associations, February 2014) See: http://www.rouhani.ir/event.php?event_id=310

¹⁴ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, May 2015, <https://undocs.org/A/HRC/28/70>

¹⁵ OHCHR News, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24333&LangID=E>

¹⁶ Center for Human Rights in Iran, <https://iranhumanrights.org/2020/06/list-of-attorneys-imprisoned-in-iran-for-defending-human-rights/>

¹⁷ Human Rights Watch, <https://www.hrw.org/news/2018/12/13/iran-escalating-crackdown-lawyers>

¹⁸ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/97>

¹⁹ <https://www.refworld.org/docid/478b2b2f2.html>

²⁰ Principle 20 of the Basic Principles <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

²¹ See more: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, May 2015, <https://undocs.org/A/HRC/28/70>

²² Radio Farda, <https://en.radiofarda.com/a/more-than-12-000-lawyers-in-iran-reject-move-to-dismantle-bar-association/30590110.html>

B. The active involvement of counsel must be provided for, whatever the nature of the case, starting with the custody or, the very least, the investigation phase, throughout the trial and in appeals stage

The guarantee of the right to legal defense is enshrined in Article 35 of the Constitution, which also ensures the right to choose a lawyer.²³ Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to “be accompanied by a lawyer during the preliminary investigations”.²⁴ Article 48 of the CCP permits the accused to “demand the presence of a lawyer from the start of detention.”²⁵ ²⁶ Although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is differentiated between the pre-trial and trial phases.²⁷ For instance, the CCP does not ensure access to free legal assistance during the investigation phase in cases where the accused faces charges other than those punishable by severe sentences such as the death penalty or life imprisonment. As a consequence, safeguards provided in the Iranian legal framework fall short to protect the accused person’s right to access legal counsel in the pre-trial phase. In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the CCP which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extension until the end of the investigation, in cases related to national security, terrorism or financial corruption.²⁸ ²⁹ Such amendment would further restrict access to legal counsel during the investigation phase.

Such restrictions are inconsistent with the UN International Covenant on Civil and Political Rights. The Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to counsel,³⁰ including during the pre-trial phase.³¹

C. Access to legal aid must be made more effective

In many reported cases, especially national security cases, defendants have reported seeing their lawyer for the first time on their day of trial.³² ³³ Prisoners reportedly remained

²³ Constitution of the Islamic Republic of Iran <http://www.iranchamber.com/government/laws/constitution_ch03.php>

²⁴ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

²⁵ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

²⁶ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

²⁷ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

²⁸ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

²⁹ Amnesty International, www.amnesty.org/en/documents/mde13/0379/2019/en/ ;

<https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

³⁰ CCPR General Comment No.32 <<https://undocs.org/CCPR/C/GC/32>>

³¹ HRC Committee, Concluding observations on Georgia, CCPR/C/79/Add.75, para. 27, available at bit.ly/20caB7i; HRC,

Concluding observations on the Netherlands, CCPR/C/NLD/CO/4, para. 11, available at

www.refworld.org/docid/4aa7aa642.html

³² Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

³³ HRW <<https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>>

incarcerated without proper access to legal representation at all stages of their trial process and lawyers denied timely access to their clients' legal files.^{34 35 36} Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process.³⁷ Of the hundreds of cases that the Abdorrahman Boroumand Centre has investigated of individuals arrested for political reasons, or suspected of committing ordinary crimes, none of the individuals were interrogated with the presence of an attorney.³⁸ Similarly, none of the death row prisoners Iran Human Rights has inquired about have had access to a lawyer in the initial phase after their arrest.³⁹ Access to legal aid is therefore not effective in practice in the Islamic Republic of Iran.

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.⁴⁰ There is no readily available information indicating the number of complaints of violations to the right of access to legal counsel received and investigated by the Article 90 Commission.

Recommendation Status:

This recommendation has **NOT** been implemented

³⁴ HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>

³⁵ HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

³⁶ HRANA <<https://www.en-hrana.org/court-prevents-lawyer-accessing-files-five-sunni-prisoners>>

³⁷ Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICS_IRN_42313_E.pdf

³⁸ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICS_IRN_42313_E.pdf

³⁹ <https://iranhr.net/en/articles/4732/>

⁴⁰ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>