

Presumption of Innocence and Suspicious Assets in Legal System of Iran with Comparative Study of United Nation Convention against Corruption

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Abstract. This paper provides a study on presumption of innocence and the issue of suspicious assets in legal system of Iran and united nation convention against corruption. The first section relates to presumption of innocence, then indication of (or indicative of) criminality which is against presumption of innocence. At the continuation of this paper, the issue of suspicious assets, related convention and the position of Iran laws related to such assets have been investigated. Lastly the conclusion and required recommendation have been presented.

Keywords: Presumption of innocence, Indication of criminality, Suspicious assets, Legal system of Iran, United nation convention against corruption.

1. Introduction

In recent years, because of the present complexities and obstacles to prove some economical crimes and crimes related to corruption, legislators prefer the indication of criminality (or presumption of criminality) instead the presumption of innocence in order to fight impunity and keep political and economical security. In this sense, person (accuser) must prove that the assets and properties whose aren't proportionate to his legal income, have been gained by legal ways; so if he can't prove this mater, indication of criminality rule will be issued. This approach in united nation convention against transnational organized crimes (2000 A.D) and convention against corruption (2003 A.D) which the aim is to keep world peace and security and overcome destructive effects of corruption and economical crimes has been clearly considered. This study firstly aims to consider the issue of presumption of innocence in legal system of Islamic Republic of Iran, then investigate the prospective of legal system of Iran regarding suspicious assets, so that this country has been joined the convention against corruption; then answer this question whether in Iran laws, the presumption of innocence is ever respectable at the issue of suspicious asset, or the indication of criminality is preferred to presumption of innocence?

2. Presumption of Innocence

Presumption of innocence means that everyone assumes to be innocent unless his guiltiness is proved by the law at the competent court. This is one of the most certain cases by which the human is able to find way of defense against aggression and violence to his rights and promote the sense of security and freedom at his own self. In communities where the human are in the high level of elevation and development, the presumption of innocence represents the sample of social and cultural values. At this culture, the people learn how to avoid suspicion and malice against others and create the sense of reciprocal respect and confidence during communication with others. In fact, focus on cultural aspect of presumption of innocence is the instrument that prevents most challenges in social relations, on the other hand, it strengthens social

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correlation. (Ardebili, preface at Sarmast Bonab: 10) This presumption has been clearly considered in the domestic laws of countries and international documents of human rights that Universal Declaration of Human Rights and International Covenant on Civil and Political Rights are the most important cases of these documents. Also at interior aspect, article 37 at Iran's constitution which is derived from Islamic rules has pointed clearly to presumption of innocence. In such cases that principle is innocence and nobody is known to be guilty at the viewpoint of law unless his guilty is proved at competent court. The other articles of Constitution have also pointed to this presumption and effects. For example: article 36 that explain the rule of Nulla poena sine lege, and it is the other statement of presumption of innocence. In addition to constitutional law in which guide lines of government has been drown, also in other laws, legislator of Iran has directly or indirectly pointed to presumption of innocence and its effect; such as articles 570 to 575 at the Islamic Penal Act and articles 22 and 37 at the Criminal Procedure Act and the Respect to Legitimate Freedom and Care of Citizen Rights Act.

3. The Indication of Criminality

In contrast to presumption of innocence which was described, today by strengthening criminals against government, the right interests of the country necessitate of presumption of innocence to be limited. In other words, today ongoing development of capitalism thinking, industrial revolutions and new technologies of communication lead the offenders to commit a crime through large international and interior bonds and abuse gaps of Laws. Confronting this problems legislator tries to use new solutions against such crimes, prevent the crimes and combats this bond of criminals. One of solution is to prefer the indication of criminality rule to presumption of innocence in which accused person is responsible for burden of proof. For example, in recent years, united nation convention against corruption at some articles such as article 20 mentioned to "Illicit enrichment" that means not being proportionate person's wealth to his legal and common income, has violated of presumption of innocence and recommended the state members that provide undertakings at their interior law for such assets and prefer the indication of criminality rather than the presumption of innocence. (Najjarzadeh-Ahari:95) or at the case of money laundering issues that has been pointed at united nation convention against transnational organized crimes we can observe the priority of the indication of criminality to the presumption of innocence.

According to convention above, it can be concluded that criminal policy of united nation organization in relation to corruption and international economical crimes such as enormous money laundering is based on the priority of the indication of criminality to the presumption of innocence. In most cases the basis of diversion from presumption of innocence is the same basis that the authority accounts for the presumption of innocence at the criminal affairs. In other words, as legal justice demands, if the reason of charge doesn't exist, so the innocence of the accused person will be sentenced. Also at the special case where the existence of signs strengthen the suspicion of commission of crime by person, legal justice and public interests necessities the priority of the indication of criminality to the presumption of innocence.(Shams Naterie:73)

Generally, these cases are issued at conditions which first all, the commission of crime leads to intense shock at community or it is considered as serious threat. Secondly, proving crime isn't possible by public prosecutor because of existing special complications of crime. In such cases, in order to dangerous offenders not to be fled from the hands of criminal justice, the indication of criminality is preferred to presumption of innocence. (Ibid)

4. Approach of Iran Legal System to Indication of Criminality at the Case of Suspicious Assets

Suspicious assets refer to assets aren't proportionate to person's legal and common income. For example: suppose to official person who earns 1000\$ monthly; if he has the wealth valued as 10 million dollars, in this case, it can be said that the assets of such official are suspicious, because of lack of proportions to this legal income. As it was said, the penal policy of convention above related to suspicious income is based on the priority of the indication of criminality to presumption of innocence. Yet, the criminal policy of Islamic Republic of Iran recognized full validity to presumption of innocence which is derived from Islamic jurisprudence. At the How to Implement Article 491 of constitution Act, Iranian legislator has clearly pointed to presumption of innocence about suspicious assets and wealth. In fact, the burden of proof of illegitimacy in such assets is assigned by public prosecutor. Also the Fight To Money Laundering Act can be useful and effective on understanding criminal policy of Iran against suspicious assets and detection of wealth gained from crime. Implicitly, the Fight to Money Laundering Act in Iran has accepted the presumption of innocence and lack of stipulation to the indication of criminality in such crimes refers to the fact that legislator in Iran persist in the presumption of innocence.

5. Conclusion and Suggestion

Results of the before-mentioned statements are as follows:

- In the past, presumption of innocence involved in extended area, but today this area have been limited by development of transnational organized crimes and the crimes derived from corruption and ongoing necessity to confront and fight such dangerous crimes.
- In some cases the indication of criminality occurs against the presumption of innocence in order to fight technical and complicated crimes, so that the accused person is compelled to prove his truthfulness. This case will facilitate the process of fight such crimes.
- When conventions against corruption and convention of transnational organized crimes, encounter with suspicious assets that is: the assets which aren't proportionate to person legal and common incomes, or in other word there is signs of illegitimacy at the obtained assets, so the indication of criminality is prior to the presumption of innocence.
- Legal system of Iran acts against recommendations and guide lines of mentioned conventions regarding the issue of suspicious assets and absolutely, it recognize the presumption of innocence to be prior.

Because corruption and economical crimes have destructive affect of on the economical and political order (discipline) in national and international affairs, and also it is necessary to fight such crimes, so it seems that in some case where the focus on traditional tools of proof of such crimes which is face a few countries with difficulties, cannot be an acceptable and logical solution. In some special cases, using the indication of criminality and directing along criminal policy of United Nations Organization can help the legal system of Iran to fight such crimes.

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¹Article 49 of constitution: The government is obliged to catch wealth derived from loan sharking, trespassing, bribing, embezzlement, robbery, gambling, ..., abuse of governmental transactions, establishment of prostitution places and illegitimate cases and give back them (wealth) to the owner of rights. This sentence must be executed by the government.

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