

Amendments to the Islamic Republic of Iran's Code of Criminal Procedure -- Part 1

On June 22, 2015, a new Code of Criminal Procedure (CCP) went into effect in the Islamic Republic of Iran (IRI). While the original draft of this code, which was passed in February 2014, was considered a relatively positive development, last-minute amendments before the law was about to be implemented have raised serious concerns of further deterioration of the state of the rights of defendants in Iranian courts.

The most significant change in the last-minute amendments to the Code of Criminal Procedure was to a note to Article 48, which stated that in cases involving serious charges, such as those carrying the death penalty or imprisonment for more than five years, during the pre-trial investigative phase a defendant may only choose attorneys that have been previously approved by the head of the judiciary. This change was met by strong objections from Tehran's Bar Association. However, Sadegh Larijani, the head of the Iranian judiciary, dismissed these objections and stated that the change addressed a need to protect confidential information, which trumped the presumption of innocence for defendants charged with serious offenses and their consequent right to choose their own counsel.

Another significant change relates to cases that can be appealed to the Supreme Court of the IRI. The amendments to Article 428 of the Code of Criminal Procedure set a higher threshold for triggering Supreme Court review. For instance, in the original draft cases involving injuries resulting in compensatory payments equaling or exceeding one-third of the compensation for loss of life were eligible for Supreme Court review. But the amendments to Article 428 state that in these cases the Supreme Court will hear appeals only if the compensatory payment for the injury equals or exceeds one-half of the amount payable for loss of life. Likewise, the amendments also state that crimes punishable by class three *ta'zir* punishments or higher are eligible for Supreme Court review. Class three *ta'zir* punishments include imprisonment between ten to fifteen years, while class four *ta'zir* punishments, which were also previously covered by the provision, include terms of imprisonment between five to ten years. Many prison sentences against political prisoners and other prisoners of conscience fall into this category, and therefore it is likely that many political prisoners in the future will be deprived of the right to appeal to the Supreme Court; in such cases, the rulings of provincial appellate courts will be final. Simultaneously, an amendment to Article 426 of the new CCP lowers the requirements imposed on appellate courts when ruling on such cases.

Other changes include the expansion of circumstances that can be taken into account when deciding whether a person is fit to stand trial (Article 13), mentioning that non-governmental organizations may not attend court sessions involving crimes against decency although such organizations may have initiated the case by filing a complaint (Article 66), allowing the procurator to delegate some of his or her investigative responsibilities (Article 98), making the process of surveilling bank accounts easier for judiciary officials (Article 151), and indicating that Criminal, Revolutionary and provincial Appellate courts can have quorum with the presence of two judges (Articles 296 and 297, and the aforementioned Article 426, respectively), whereas all judges had to be present in the past.

Overall, these changes represent a concerted and multi-pronged attack on the rights of defendants in a wide variety of cases, including those involving political prisoners and prisoners of conscience. Whereas the initial drafts of the law were publicized

to suggest that they would bring a possible improvement to the country's theretofore-insufficient due process protections, amendments quietly approved only hours before the law was put into effect have done precisely the opposite. Consequently, the rule of law in Iran has been further weakened by the very institutions that purport to uphold it.

First Draft Passed in 2013	Proposed Changes by the Parliament Research Center	Final Draft	Explanation of Change	Practical Effect
<p>Article 13, Note 2</p> <p>When an individual who has committed a crime goes insane before the final verdict is issued, the prosecution is suspended until his or her recovery, unless the evidence is so compelling that the defendant cannot possibly prove his or her innocence even if he or she recovers. In this situation his or her parent^[1] or legal guardian will be instructed to introduce an attorney within five days. If no attorney is introduced, regardless of the committed crime and its respective punishment, an attorney will be appointed in accordance with applicable law, and the prosecution continues.</p>	<p>Article 13, Note 2</p> <p>When an individual who has committed a crime goes insane before the final verdict is issued, the prosecution is suspended until his or her recovery, unless, in crimes punishable by <i>diyya</i>^[2], the evidence is so compelling that an insane or unconscious defendant cannot possibly prove his or her innocence even if he or she recovers. In this situation his or her parent^[3] or legal guardian will be instructed to introduce an attorney within five days. If no attorney is introduced, regardless of the committed crime and its respective punishment, an attorney will be appointed in accordance with applicable law, and the prosecution continues.</p>	<p>Article 13, Note 2</p> <p>When an individual who has committed a crime goes insane before the final verdict is issued, the prosecution is suspended until his or her recovery, unless the totality of the circumstances regarding the commission of the crime is so compelling that the defendant could not possibly prove his or her innocence even if he or she recovers. In this situation his or her parent^[4] or legal guardian will be instructed to introduce an attorney within five days. If no attorney is introduced, regardless of the committed crime and its respective punishment, an attorney will be appointed in accordance with applicable law and the prosecution continues.</p>	<p>This provision expands the circumstances that could be taken into account in making a determination regarding whether a person is legally insane for prosecution.</p>	<p>This change may enable the prosecution and the defense to take more factors into account when arguing whether a defendant is fit to stand trial.</p>
<p>Article 48</p> <p>When a suspect is arrested, he or she can</p>	<p>Article 48</p> <p>When a suspect is arrested, he or she can request the presence of</p>	<p>Article 48</p> <p>When a suspect is arrested, he or she can</p>	<p>The note to this article states that in serious criminal cases and those</p>	<p>The amendment to Article 48 effectively bars defendants in</p>

<p>request the presence of an attorney. The attorney, observing the secret nature of the investigation and the negotiations between the parties, should meet with the suspect. At the end of the meeting, which should not last more than one hour, the attorney may submit his or her written notes to be included in the case file.</p>	<p>an attorney. The attorney, observing the secret nature of the investigation and the negotiations between the parties, should meet with the suspect. At the end of the meeting, which should not last more than one hour, the attorney may submit his or her written notes to be included in the case file.</p> <p>Note:</p> <p>When a person is detained for committing a crime mentioned in Article 302(a-c) of this code^[5], he or she cannot meet with an attorney for a week after his or her arrest. In cases involving crimes against national security, or in cases involving organized crime, counsel may be present during the investigation phase at the discretion of the prosecutor or the procurator.</p>	<p>request the presence of an attorney. The attorney, observing the secret nature of the investigation and the negotiations between the parties, should meet with the suspect. At the end of the meeting, which should not last more than one hour, the attorney may submit his or her written notes to be included in the case file.</p> <p>Note to Article 48</p> <p>In cases of crimes against internal or external security, and in cases involving organized crime, where Article 302 of this code is applicable, during the investigation phase, the parties to the dispute are to select their attorneys from a list approved by the head of the judiciary. The names of the approved attorneys will be announced by the head of the judiciary.</p>	<p>request the presence of an attorney. The attorney, observing the secret nature of the investigation and the negotiations between the parties, should meet with the suspect. At the end of the meeting, which should not last more than one hour, the attorney may submit his or her written notes to be included in the case file.</p>	<p>involving charges commonly used against political prisoners and prisoners of conscience, during the pre-trial investigation phase defendants may only select attorneys from a list approved by the head of the judiciary.</p> <p>political cases from having their desired attorneys during pre-trial stages of their prosecution, when the authorities often employ physical and psychological torture in order to extract confessions from the accused.</p>
<p>Article 66</p> <p>Non-governmental organizations with founding charters focused on supporting children, adolescents, women, unhealthy individuals, physically or</p>	<p>Article 66</p> <p>No changes</p>	<p>Article 66 (Changes)</p> <p>Note 1: If the crime committed has a specific victim, obtaining his or her consent for taking action in accordance with this article is necessary. If the victim is a child, mentally ill or ignorant about financial crimes,</p>	<p>Note 4 is added to reiterate that in cases involving crimes against decency (which often include charges of a private nature), due to the private nature of the proceedings, non-</p>	<p>Non-governmental organizations are prohibited from attending court proceedings in cases that they have initiated when those cases involve crimes against decency.</p>

<p>mentally disabled persons, the environment, natural resources, cultural heritage, public health, and support for civil rights, may file complaints against crimes committed with respect to the areas mentioned above. They may participate in all stages of the judicial process to present evidence and to protest the rulings of judicial authorities.</p> <p>Note 1: If the crime committed has a specific victim, obtaining his or her consent is necessary for actions taken in accordance with this article. If the victim is a child, mentally ill or ignorant about financial crimes, the consent of his parent^[6] or the legal guardian is to be obtained. If the parent or the legal guardian has been the perpetrator of the crime, the said organizations will take the necessary measures after obtaining the consent of the guardian at litem or the approval of the prosecutor.</p>		<p>the consent of his parent^[7] or the legal guardian it to be obtained. If the parent or the legal guardian has been the perpetrator of the crime, the said organizations will take the necessary measures after obtaining the consent of the guardian at litem or the approval of the prosecutor.</p> <p>Note 4: Implementation of this article will be in accordance with Article 165 of the Constitution. In crimes against public decency, non-governmental organizations subject to this article, in accordance with Article 102 of this law and its notes, may only file a complaint and provide their evidence to judicial authorities, but they do not have the right to be present at the proceedings.</p>	<p>governmental organizations are prohibited from attending court proceedings, whereas they would have been able to do so under the original draft.</p>	
<p>Article 98</p> <p>The procurator must personally conduct the necessary investigation to gather the evidence</p>	<p>Article 98</p> <p>The procurator must personally conduct the necessary</p>	<p>Article 98</p> <p>The procurator must personally conduct the</p>	<p>The amended article states that in cases involving crimes mentioned in Article 302 (a-d), the procurator has</p>	<p>As a result of this article a broader range of government agents may participate in the investigation</p>

<p>related to a crime. But he or she, in crimes other than those mentioned in Article 302(a-d)[8] of this code, may, after providing the necessary training, delegate searches, questioning of witnesses and individuals with relevant information, gathering the information and evidence related to the commission of a crime, and any other legal measure necessary for investigating the crime, to authorized officers of the Ministry of Justice. In this circumstance, in addition to providing oversight, the procurator is to take necessary measures if he or she determines that the actions of the authorized officers need to be complemented.</p>	<p>investigation to gather the evidence related to a crime. This does not preclude the procurator's ability to delegate a portion of the investigation and necessary measures for discovery of a crime to authorized officers of the Ministry of Justice after providing the necessary training. In this situation, the procurator, while providing oversight, will take the necessary action if he or she deems it necessary to complement the investigation.</p>	<p>necessary investigation and take the necessary action for gathering evidence regarding the commission of a crime. This does not bar the procurator from delegating a portion of the investigation and necessary measures for discovery of a crime to authorized officers of the Ministry of Justice after providing the necessary training. In this situation, the procurator, while providing oversight, will take the necessary action if he or she deems it necessary to complement the investigation.</p> <p>Note: In Sections 302(a-d) of this code the procurator may also conduct the necessary investigation in cooperation with authorized officers of the Ministry of Justice.</p>	<p>the authority to delegate investigative duties to authorized officers of the Ministry of Justice. Crimes mentioned in Article 302(a-d) are a) crimes punishable by death, b) crimes punishable by life imprisonment, c) crimes punishable by amputation, intentional crimes against another's body resulting in compensatory payments equaling or exceeding one third of the compensation for loss of life, and d) crimes punishable by class four punishments or higher.[9]</p>	<p>phases of cases where serious crimes are alleged (see footnote 5). Note that political and press crimes, which are also covered by Article 302 of the Code, are explicitly left out of this provision.</p>
<p>Article 102</p> <p>Any pursuit or investigation for adultery, sodomy and other crimes against decency is prohibited. No one may be questioned regarding these matters, unless when the crime is committed in public, or when there is a private complaint. In this situation, the judge will pursue and investigate only within the confines</p>	<p>Article 102</p> <p>Any pursuit or investigation for adultery, sodomy and other crimes against decency is prohibited. No one may be questioned regarding these matters, unless when the crime is committed in public, when there is a private complaint, when it has occurred through force, or when the crime has been committed in an organized fashion. In this situation, the judiciary official will pursue and investigate only within the</p>	<p>Article 102</p> <p>Any pursuit or investigation for crimes against decency is prohibited. No one may be questioned regarding these matters, unless when the crime is committed in public, or when there is a private complaint. In this situation, the judge will pursue and investigate only within the confines of the complaint, or what</p>	<p>The terms "adultery" and "sodomy" have been removed from this provision</p>	<p>The terms "adultery" and "sodomy" were extraneous as they can be included under the phrase "crimes against decency." The note from the original draft has been preserved.</p>

<p>of the complaint, or what has been seen in the public.</p> <p>Note 1: In adultery, sodomy, and other crimes against decency, whenever there is no private complaint, and the defendant intends to voluntarily confess, the judge advises him or her to cover up the crime and not to confess.</p>	<p>confines of the complaint, or what has been seen in the public.</p>	<p>has been seen in the public.</p> <p>Note 1: In crimes against decency, whenever there is no private complaint, and the defendant intends to voluntarily confess, the judge advises him or her to cover up the crime and not to confess.</p>		
<p>Article 151</p> <p>Procurators, when necessary, and with the approval of the head of the provincial Ministry of Justice office, may surveil private bank accounts in order to discover a crime or access evidence regarding the commission of a crime.</p>	<p>Article 151</p> <p>Procurators, when necessary, may surveil private bank accounts in order to discover a crime or access evidence regarding the commission of a crime.</p>	<p>Article 151</p> <p>Procurators, when necessary, and with the approval of the head of the judicial district^[10], may surveil private bank accounts in order to discover a crime or access evidence regarding the commission of a crime.</p>	<p>Instead of the head of the provincial Ministry of Justice office, the head of the judicial district, which is under the control of the country's judiciary instead of its elected executive branch, has the authority to approve the surveillance of bank accounts.</p>	<p>This change may lower practical limitations as to the surveillance of private bank accounts.</p>
<p>Article 296</p> <p>First-level Criminal Courts^[11] are to be formed by a chief judge and two associate judges. In the absence of the chief judge, the court is to be comprised of three associate judges. In this situation the associate judge with the most judicial experience will chair the proceedings.</p>	<p>Suggestions for Article 296</p> <ol style="list-style-type: none"> 1. The structure of the court system should not be changed. Instead, the courts' jurisdiction should be amended in subsequent articles. 2. Considering Article 357, the sentence saying "In this situation the associate judge with the most judicial experience will chair the 	<p>Article 296</p> <p>First-level Criminal Courts are to consist of a chief judge and two associate judges. The court will have quorum with the presence of two judges. If the chief judge is absent, the associate judge with the most judicial experience will chair the proceedings.</p>	<p>Conditions for quorum have been added.</p>	<p>Criminal courts will have a quorum with the presence of two judges. In the past, these courts were composed of panels of five judges each, and all judges had to be present in order to issue rulings. In practical terms, in the past three votes were needed for a conviction, but</p>

	<p>proceedings” should be eliminated</p> <p>3. The recommended change for amending note 1 of this article is appropriate.</p>			<p>under the amendment only two votes are needed.</p>
<p>Article 297</p> <p>A Revolutionary Court, consisting of a chief judge and two associate judges, adjudicates crimes specified in Article 302 (a-d) [sic] [12] of this law. The court will hear other cases with the presence of the chief judge, an alternate judge or an associate judge.</p>	<p>Suggestions for Article 297</p> <ol style="list-style-type: none"> 1. The structure of the court system should not be changed. Instead, the courts’ jurisdiction should be amended in subsequent articles. 2. A change is necessary and appropriate in the first sentence. The initial sentence should be changed to the following: “The Revolutionary Court will be established in the capital of each province, and, at the discretion of the head of the judiciary, at other judicial districts...” 	<p>Article 297</p> <p>A Revolutionary Court will be established in the capital of each province, and, at the discretion of the head of the judiciary, at provincial judicial districts. This court will hear cases arising out of crimes mentioned in Article 302(a-d) of this law at the presence of a chief judge and two associate judges, and it will have quorum with the presence of two judges. The court will hear other cases with the presence of the chief, an alternate judge or an associate judge.</p>	<p>The amended article specifies the location in which Revolutionary Courts are to be established. In addition the amended article states that Revolutionary Courts will have quorum with the presence of two judges when hearing cases involving Article 302(a-d).</p>	<p>A Revolutionary Court will have a quorum with the presence of two judges. Under the previous Code, these courts were composed of panels of five judges each for important cases including those wherein there was a possibility of a penalty of death, and all judges had to be present in order to issue rulings. In practical terms, in the past three votes were needed for a conviction, but under the amendment only two votes are needed.</p>
<p>Article 426</p> <p>The Provincial Courts of Appeals have jurisdiction to hear appeals from preliminary judgments in criminal cases, except when the Supreme Court has jurisdiction. The seat of the Provincial Court of Appeals is the capital city in each province. This court is comprised of the</p>	<p>Article 426</p> <p>No recommended change.</p>	<p>Article 426</p> <p>The Provincial Courts of Appeals have jurisdiction to hear appeals from preliminary judgments in criminal cases, except when the Supreme Court has jurisdiction. The seat of the Provincial Court of Appeals is the capital city in each province. This court is comprised of a</p>	<p>The amended article states that the Provincial Courts of Appeal will have quorum with the presence of two judges.</p>	<p>Appellate Courts and Supreme Court branches will have quorum with the presence of two judges. Previously these courts were also composed of panels of three judges each, but all judges had to be present in order to issue rulings.</p>

<p>chief judge, or an alternate judge, and two associate judges.</p>		<p>chief judge and two associate judges. The Courts of Appeals and Supreme Court branches will have a quorum with the presence of two judges.</p>		
<p>Article 428</p> <p>The appeals from judgments issued in cases involving crimes punishable by death, amputation, life imprisonment, crimes punishable by class four punishments or higher, intentional crimes against another's body resulting in compensatory payments equaling or exceeding one third of the compensation for loss of life, and judgments issued in cases of political or press crimes, will be heard at the Supreme Court.</p>	<p>Article 428</p> <p>Considering the changes to Article 302 of this code, this article should be amended as follows:</p> <p>The appeals from judgments issued in cases involving crimes punishable by death, amputation, life imprisonment, crimes punishable by class three punishments^[13] or higher, intentional crimes against another's body resulting in compensatory payments equaling or exceeding one half of the compensation for loss of life, and judgments issued in cases of political or press crimes, will be heard at the Supreme Court.</p> <p>Also, the phrase "victim" should be eliminated from Article 428 in order to prevent misinterpretation.</p>	<p>Article 428</p> <p>The appeals from judgments issued in cases involving crimes punishable by death, amputation, life imprisonment, crimes punishable by class three punishments or higher, intentional crimes against another's body resulting in compensatory payments equaling or exceeding one half of the compensation for loss of life, and judgments issued in cases of political or press crimes, will be heard at the Supreme Court.</p> <p>Note: Implementation of this article does not change the supervisory duties of the Supreme Court as delineated in Article 161 of the Constitution.</p>	<p>The article, as originally written, stated that appeals to convictions including crimes punishable by class four punishments or higher were to be heard at the Supreme Court. The amended article raises that threshold to class three punishments or higher. Also, this article originally stated that appeals to convictions to crimes involving compensatory payments equaling or exceeding the compensation for loss of life were to be heard at the Supreme Court. But the amended article lowers that threshold to crimes causing compensatory payments equaling one half of the compensation for loss of life.</p>	<p>By establishing a higher threshold for triggering Supreme Court review the changes made in this case will likely reduce the number of cases heard at the Supreme Court.</p>

[1] Under Iran's Civil Law the term parent refers to the father or the paternal grandfather.

[2] Under Islamic law *diyya* is a compensatory payment made when a crime or an unintentional act has caused an injury.

[3] Under Iran's Civil Law the term parent refers to the father or the paternal grandfather.

[4] Under Iran's Civil Law the term parent refers to the father or the paternal grandfather.

[5] Article 302 of the new Code of Criminal Procedure (available at: <http://www.ghanoon.ir/آیین-دادرسی-کیفری-جدید/>, in Persian) establishes a new layer of criminal courts to deal with crimes including those with penalties of death, amputation of limbs, five years or more of imprisonment, and political or press crimes.

[6] Under Iran's Civil Law the term parent refers to the father or the paternal grandfather.

[7] Under Iran's Civil Law the term parent refers to the father or the paternal grandfather.

[8] See footnote 5

[9] The Islamic Penal Code specifies eight classes of *ta'zir* punishments. *Ta'zir* punishments are punishments that are not explicitly fixed under Shari'a law, but are handed out at the discretion of a judge. Class eight punishments are the most lenient, while class one punishments are the harshest. Article 428 states when a class four punishment or higher (one through three) has been handed out, the Supreme Court is to directly hear the appeal. Class four punishments include imprisonment between five to ten years, fines ranging from 18 to 36 million toumans (approximately \$5,559 to \$11,118 per the 2015 exchange rate), and being permanently banned from employment in the public sector.

[10] The head of the judicial district is the highest ranking judiciary official in a town or county. Often the local prosecutor serves as the head of the judicial district.

[11] See footnote 5.

[12] It is likely that the article in fact refers to Article 303, which deals with cases within the purview of the Revolutionary Courts. Article 302 explicitly deals with cases within the purview of Criminal Courts, a separate court system.

[13] Class three punishments include imprisonment between ten to fifteen years and fines ranging from 36 to 55 million toumans (approximately \$11,118 to \$16,986 per the 2015 exchange rate).