COMPARE EXPERTISE IN THE LEGAL SYSTEM OF IRAN AND FRANCE

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Abstract. The progress of science and technology in all fields, has caused the magistrate inevitably refers the matter to an expert in discovering and proving the crime. This study has been written with the aim to compare expertise in proving crimes in Iran and France law through the library and taking notes and in descriptive – analytical way. It concluded that, in Iran's rights influenced by the jurisprudence, an expert's opinion is applied just as statistics, to judge for proving the charges and it is not considered an independent reason to prove the crime. However, in French law, expertise is remembered as an independent reason, and with regard to new technologies, the new methods of discovering and proving the crime is used.

Keywords: Expertises, expertise theory, comparing, crime detection, crime proof, jurisprudence, Iranian law, French law

1. Introduction

Today, advancements in science and technology revealed their effects in all areas, including tools to detect and prove crimes, so that, in an era that is called the era of "scientific evidence", even traditional evidence, such as witness and confession, in some cases, are measured with the help of new evidence.

The most important feature of the scientific period is fading, non-empirical documentation, or in other words, the spiritual in the criminal justice system. In the past, due to the lack of development and progress of science, on the one hand and public opinion in a firm position of spiritual and esoteric matters, on the other hand were the main evidence for expressing to prove the crime was summed up in confession, testimony, and ultimately, the magistrate's knowledge. Due to the lack of tools and necessary facilities, even the magistrate's knowledge also, mainly depended on his inner perceptions. However, with the passage of time and abandon of non-experimental affairs and the emphasis on verification of all events through experimentation, the importance of this type of evidence has significantly reduced. Even the experts welcomed this and considered it closer to the administration of justice, because, disadvantages and problems related to obtaining a confession or testimony, or even authentication and real authority of the judge, was not hidden from anyone. Everyone wanted a fair and impartial approach, and proved reality and truth of a claim, that, obviously, the issue is very important in criminal allegations, due to its heavy consequences. Therefore, little by little, the tendency to scientific evidence, in terms of criminal justice increased.

The evidences that cover a wide range of measures, scientific and technical examination, are very diverse, so that providing an exhaustive list of them seems very difficult. Measures, such as research and local examinations, review the material evidence or physical evidence, scientific and technical examination, audit and inspect the premises, confiscate documents and data, interception of correspondence and communications, audio and video recording and many others actions will be done after the crime, in order to uncover the truth and achieve the main culprit. Many of these discoveries have been considered as "judicial circumstantial and hearsay evidence" in Iranian and France criminal procedure. The legitimacy of obtaining reason will be emphasized in obtaining circumstantial and hearsay evidence in the light of research and Local Examinations and resorting to scientific and technical measures, rules and legal regulations, particularly respect for the rights of individuals with human dignity and full judicial supervision over these measures to protect the credibility of enforcement, criminal justice.

With this introduction, the importance of expertise in general, the purpose of this article is to answer two important questions: (Taddayon, 2012) does expert opinions have equal importance in the rights of Iran and France. In addition, (Diani, 2005) whether the expert's theory in the Iranian law, which was affected by the jurisprudence has differences in terms of proof with French law.

In this article, with a comparative look (similarities and differences), we will study the expertise and its importance in the rights of the two countries and the new evidence that will be obtained from the Expertise in the rights of Iran and France. Therefore, the expertise differences and its share should be determined in the rights of the two countries, in terms of proof.

2. Expertise (scientific and technical examinations) in Iran and France right

Development and progress of science and technology in all fields has caused that, in the discovery of many crimes and even their proof, the judge will be unable to take steps to prove the crime without recourse to experts. Therefore, he has to vote according to people who, because of their expertise in a particular science or technology or even having experience and expertise and skill, have the necessary ability to illuminate the subject.

The best example of Justice Statistics is expertise. It so happens that, due to the lack of magistrate's dominance, to the subject and personal information, to recognize, the need to refer to the experts, meaning the technical experts is required, that the law has been interpreted as an expert of the people. With the expertise, the degree of specialization or expertise will be used to judicial solution and help judge, in other words, "experts will help the judge in knowing the truth in this case."

The evidence of expert's knowledge is not enjoying the senses directly, but he understands the issue through intellectual deduction and other evidence, and his credibility and expertise authority is based on respecting the terms and legal conditions and these features split it from the testimony.

Expertise, as an important judicial jurisdiction, by examining the "symptoms and signs that do not lie" is considered the language of these symptoms and by examining these signs and symptoms, helps the proceedings in creating the knowledge and judicial certainty. That is why, in an age of scientific evidence, the expertise should be called as criminal evidence Queen (Nejabati, 2008).

According to the Code of Criminal Procedure of Iran, "the experts will be invited to come, when their comments will be necessary for the scientific or technical or special knowledge ". It is the opposite concept that, when the magistrate has special expertise, or for example, "if the court finds that the value of the property is determined equivalent to collateral, expert opinion is not needed to be garnted". So, we can say, cases referred to the experts is when a judge is incapable of detecting true, that in this case, it refers to experts and obviously, referring to the expert is required, when the specialized technical issue is unknown to the judge and this issue should be clarified for his conscience. Obtaining technical and specialized aspect of the issue is with the magistrate, because, identifying thematic issues is with him, and he must detect the issue with considering his limits of jurisdiction, having or not having technical and specialized aspect, and take appropriate action.

Study the Supreme Court and High Court of Judges is an indicative of the authorities' tendency of the more issues referred to experts and this matter is justified by technical progress and complicating matters which were simple in the past. However, at the same time, "if the opinion of experts does

not match with the circumstances known to the expert, the prosecutor rejects the expert opinion justifiably, and refers the subject to other experts ". The expert will take action in due time, to offer expert opinion and fulfill his mission, and after completion of an expertise operation, he gives his result and report on his work, to the reference which has given a mission. Expertise's commenting should be explicit and legitimate and, therefore, the expert cannot leave a comment in general, and should not justify his opinion with scientific basis about the issue, and he should note the tips and explanations that are necessary to explain the theory fully. This theory has judicial jurisdiction and the recognition of accuracy or inaccuracy of that depends on the dealing judge and if, it does not match with the circumstances and certain condition of the issue, the court does not comply."Expert opinion is one of the Evidence to prove claims, unless the judge decides that, it does not match with the truth, then, if necessary, other experts will be used. Therefore, if the theory of Forensic Medicine appeals the judges and, the authority diagnoses that theory consistent with the reality, it must be acted accordingly. "

In Criminal Investigation Act 1810 in France, the expertise subject was unforeseen, and it was the tenor of the provisions article of this Act that was about police operations and allowed the police to resort to the expert, in investigating the suspicious deaths, the legislator's attention on the subject was concluded. The silence of the law of criminal investigations in legal experts was quite reasonable, because "in the expert, it is assumed that we can refer to the expert, who has required knowledge and expertise, while, in 1810, scientific basis and the number of experts was not enough" and the only available specialist was a doctor. The judges also, in the silence of the law, called the experts as witnesses to the court. However, today, in French law, the expert does not count a witness, that his report has the value of simple information and the court infers the results (Jafari, 2006).

According to the provisions of the French Code of Criminal Procedure, the judicial police officer, directly in research related to evident conditions, or according to the city prosecutor's permission in basic research can refer to qualified persons if necessary for technical examination and analysis, for example, he invites the tax inspector to participate in the research. Any investigation authority or trial, "If a technical issue has been raised, may, directly or at the request of prosecutors, or parties, commands to expertise."

Therefore, the legitimacy of obtaining reason requires complying with legal terms and conditions from judicial authorities and experts during expertise operations, obtaining the reason in a way that, while respecting the rights of defense, maintaining their probative and judicial value in Criminal procedure process. Because of that, in the French and Iranian criminal law, the expert reports, in most cases, are prepared with the participation and cooperation of the parties, and for them, the right to object to the expert report, is predicted. In criminal proceedings in France, following the ratification fifth law in March 2007, the principle of adversarial presence and the expertise has been strengthened. So that, until this date, people did not inform the subject of expertise and expert missions was specified in secret at the court office. However, then, according to Article 1-161 of the Criminal procedure Code, "the copy of the expertise decision instantly, will be sent to the city prosecutor and lawyers and they have a ten-day respite... to request the magistrate, to modify or complete the questions posed for the expert, or append an their chosen expert... to the expert or elected expert. " These regulations are the full respect for the rights of the defense and adopt the principle of hearing person and, consequently, it is is followed by a better monitoring of compliance with the principle of legitimacy for obtaining reason.

3. Expertise in genetic and biological evidence in the criminal law of Iran and France

The use of ways, which provide the access to biological evidence, such as blood tests and "DNA", are not so well known in Iran criminal proceedings and judicial process and limited applications are considered for them. In a letter dated 03.Oct.2001 with No 01.07.1137, Legal Medicine Organization, some points can be concluded about the facilities of the organization in the application of the "DNA" test and the use of the procedure of the scientific method. First, the resources of Forensic Medicine, for the "DNA" test and its applications, in judicial matters is in order to help identify individuals, or remaining parts of the human body, at scenes of crime. Most activities in this regard include identifying parents and children, determining the claimed paternity and proving the existence of the father, determining and diagnosing individual identity and proving or disproving the existence of kinship relations with other persons, identifying the culprits from the effects and materials at the crime scene. In addition, helping identify and verify it when the bodies are mutilated or remains of bodies found in different places and determining the sex of the unrecognizable bodies and aborted fetuses and finding patches at the crime scene.

Second, the first step in testing "DNA" is the sampling and because of the sensitivity and importance, and to enhance the quality of the samples and prevent potential abuses in the process of sampling, taking samples of patients is outpatient and takes place only in the presence. Regarding the dead bodies, good sample will be taken in certain circumstances, under forensics supervision, and promptly will be delivered to the laboratory.

Regarding the fingerprints as well, according to Article I of the Regulations, following amendment to a single article, canceled fingerprinting approve on 25.Sep.1989 by the Parliament, approved on 27.Sep.1989 by Council of Ministers, they attempt to fingerprint in six occasions. The most notable is in the case of a person who applies for Police Clearance with the introduction of competent authorities, those who go to prison with the order of the judicial authorities. In addition, those who are condemned to non-prison punishments, such as flogging and defendants and suspects of judicial and law enforcement, in order to keep criminal records, check the identity and background of potential abuse. They are subjected to fingerprinting (Jalali Farahani, 2007).

In Iranian criminal law, unfortunately, no certain rules can be seen about personal privacy, especially their physical privacy, and only we can confirm respecting for the privacy of persons from the tenor of some provisions in a single article of the constitution and the law rapport Legitimate Freedoms and Protecting Citizens' Rights. In the second chapter of the Privacy and Protection Act, which has not been legal, the privacy of physical persons has been emphasized and human dignity and the rights and freedoms associated with has been considered inviolable. Searching human internal organs is banned and judicial competent authority only issues examination of internal organs when there are strong suspicions that, the result of this examination can help to prove the crime. Searching internal organs should be done with the use of accepted medical procedures, by a physician, and possible by medical experts. It is only applicable if using other legal methods will be impossible or ineffective.

Blood samples from people as a proof of guilt, depends on searching internal organs. Article 12 of the bill, stipulates: If the suspect or defendant resist in the search of internal organs. Authority of Justice can take action to the extent that is reasonable to neutralize his resistance. However, in the process of Iranian criminal procedure, blood samples or other fluids, in order to perform experiments and different biological tests do not need the beneficiary's consent. Even crimes that can justify resorting to "DNA" and blood tests have not been specified and

this could be contrary to the principle of respect for the privacy of individuals, and distort the legitimacy to obtain the evidence. The situation is the same for searching foreign objects in the body. During the investigation, sometimes searching foreign objects in the body of the victim or perpetrator can be useful in uncovering the truth. However, the question is whether to search and inspect the internal organs of persons is possible. If the victim is, deceased or when the victim and the perpetrator are alive, and the parents accept that this search takes place, these actions will be legitimate and evidence will be obtained from legal and acceptable manner (Hasani, 2006). However, if persons reject searching and inspections of objects in their body, in principle, it is unacceptable that the judge can violate the principle of respect for the body and the will of the people, and in the lack of law, directly, he intervenes without legal permission. Now, in the Iranian criminal law, there is no specific law in this area and in the silence of the legislature, some prosecution authorities issue order of inspection and testing individual blood of the accused and suspects, in some cases, such as seized drugs and drinking alcohol and addiction (Rassat, 2007; Guèry, 2007).

In French criminal law, in certain cases, people carrying drugs that hide the drugs inside their body, when they cross the border, if the customs authorities suspect to them, with the agreement of them, they will be subjected to medical review. However, no wisdom and decisive required action can be used and in practice, with monitoring the people, the issue is resolved.

In the sampling of blood and exhaled air to those suspected of drinking alcohol or taking drugs, French lawmakers considered Criminal penalties for those who reject sampling. However, there is no physical coercion prescribed by law out of respect for the rights and freedoms of individuals. According to Article 4-234, rules of the road, when, tests the amount of alcohol in exhaled air gives the permission to prove the existence of the alcohol, or when, suspected people reject the test, by analyzing exhaled air or through medical, laboratory and biological analyzing of a blood sample, they can address the issue. The lack of acceptance of these investigations by the driver has the driving punishment while intoxicated with alcohol (up to two years in prison and a fine of up to 45,000 euro). According to articles 2 and 1-3354, the food and alcoholic beverages rule, the discovery of crimes or misdemeanors or traffic accident, which appears to have been under the influence of alcohol, the police are obliged to do medical and biological laboratory research, referred to Article 4-234 rules of the road, on the persons committed the act. The lack of acceptance of these investigations will follow up to one year in prison and a fine of 45,000 euros.

Article 1-235 rules of the road, the people who drive under the influence of drugs, have been raised. If the accident results in death, the police should perform medical investigations of all drivers who were involved in this accident, and when, the answer is positive, or testing is not possible or drivers do not accept these investigations, police are analyzing (medical, laboratory and bio), to prove the drug use. If the accident leading to injury, doing these measures is optional, however, denial of accepting the measures will have up to two years in prison and 45,000-euro cash.

Officers of the judicial police, during the investigation, can perform external sampling in the people that there is one or more reason for involvement in crimes. These sampling permits comparisons with the effects and the evidence provided for the necessities of the investigation. These officers, also can list the signs, especially those of the fingers, palms or shooting. These symptoms are kept in particular papers. All of these measures carried out with the consent of the beneficiaries and lack of his consent is punishable by up to one-year imprisonment. Taking fingerprints and photographs as well, could also be made in the process identity investigation.

However, regarding obtaining reason through "DNA", France had no legal regulation for a long time in this regard, until the rule June 17, 1998, was enacted about the nature of sexual offenses and victim child protection. This was raised for the first time, in Article 54-706 of the Criminal Procedure Code (National Securities auto genetic effects) that have been completed by the circulars December 14, 1998 and its Regulations, on 18 May 2000, relating to securities of genetic effects and the central unit storage of biological samples. The judicial procedures confirmed the acceptance of this type of reason.

According to the first paragraph of Article 54-706, Code of Criminal Procedure (National Securities autogenetic effects, which is under the supervision of a judge) is focusing on the genetic signs of biological symptoms and genetic effects of sentenced persons, for one of the above charges, in Article 55-706, in order to facilitate the identification and prosecution of the perpetrators.

Therefore, genetic sign documents are contained signs of "DNA" taken from the scene of the crime that the committe is unknown and genetic signs of people with definitive sentence, to one of the crimes mentioned in Article 55 of the Act 706. The documents are under the supervision of a judge and in practice, they are under the supervision of the prosecutor of Paris. Genetic signs documents are, briefly, about the perpetrators of sexual crimes, crimes against humanity and crimes and misdemeanors or intentional injury to life of persons, torture and acts of cruel, deliberate violence, drug trafficking, human trafficking, prostitution, exploit for begging and child endangerment, theft, extortion, fraud, vandalism, damage to the fundamental interests of the nation, terrorist acts, fraud in coins and concealing crimes or laundering proceeds of crime.

Generally, in the case of people non-compliance with the necessary sampling, there are three different procedures in different countries. In some countries, lack of acceptance these measures has the punishment of imprisonment or a fine, others have permitted the attorney so that according to the evidence of the crime, infer the results of this possible rejection. Another group of countries accepted the coercion and requirements, in order to do sampling. Some points that can be inferred from Article 56-706 of the French Code of Criminal Procedure. First, whenever the subject of a convicted person will be with ten years' imprisonment for crimes or misdemeanors, the sampling can be done without the consent of the beneficiaries and, therefore, the concept of the rule of law is a resorting license to coercive measures. Secondly, in other cases, rejection of biological sampling has up to one year in prison and a 15,000-euro fine, and the directors of research cannot resort to coercive measures. Thirdly, doing or start doing exercises to replacing samples of biological material for a third party, instead of their own biological material has a punishment of up to three years in prison and a 45,000 euro fine.

4. Expertise of Electronic Evidence in Criminal Law in Iran and France

In the field of ICT, two technologies, meaning the computer and telecommunications have a decisive role. Computers facilitate information processing and communications disseminate this processed information has created radical changes in the twentieth century. Because, with the discovery of prodigious capabilities, resulting from the combination of these two technologies, a revolution has been in the field of ICT that its peak can be seen in the emergence of global computer information networks. These networks, which are composed of many computer systems connected to each other, communicate with each other with the help of advanced technologies of telecommunications, and create a space with quite distinct characteristics from the physical world, which some call it virtual space and others call it cyberspace. Cyberspace is (emerged electronic integrity through global communications of the creation, storage, process and transmission of electronic data means with simulation and virtualization features). This potential space has

no limit and no central authority, so that "anonymity, fugitive reasons, lack of boundaries, pale police presence, instant communication with a simple touch, the growing complexity" has made the cyberspace to a great environment for offenders. Because, this space, like other aspects of human social life is not spared from a phenomenon called crime, so that, what is now known as cybercrime, covers two categories of offenses. The first group is offenses that, like they exist also in the physical world and cyberspace without changing criminal elements, with features that puts in the hands of criminals, facilitate their committing.

In addition to various developments that appeared in the concept of crime and the way the offense is committed in cyberspace, the field of scientific discovery-related offenses also were experiencing transformation. Therefore, from the beginning of the criminal deal with cybercrime, issues that are concerning criminal procedure, including evidence of the systems and problems surrounding it and obtaining electronic evidence and proving cybercrime have been considered and studied. In principle, for that, any information, in any format, including electronic and non-electronic have the ability to provide the court and the court also invoked, first the identity of the creator should be known, and second, the information will be valid and reliable. The absence or deficiency of any of these conditions will reject the evidence and deprive the probative value of them.

Although the law of e-commerce, adopted on 13/Jan/2005, provisions in relation to the evidence are presented, but in connection with its citation, according to experts, in this field, no provisions have been predicted. Different stages of citation, and the experts, and their comment can be cited only from the tenor of the Criminal procedure Code.

However, in France Procedure Code, in some articles, obtaining the electronic evidence is considered. In a preliminary investigation, judicial police officers can proceed with the seizure of documents and the computer information records data. According to Articles 94 and 97 of the Code of Criminal Procedure, Magistrate can inspect in every place that there are objects containing computer information, which their discovery is useful for truth, and he can use from any person or institution that was expert and have information on this topic. Also, in connection with the decoding of data, the provisions were anticipated in French law by lawmakers (such as Article 1-230), but in Iran, there is no such legal rules and as noted, the general provisions of Regulations 2013 Criminal procedure invoked by the judicial authorities can be invoked for the use of experts in the field.

5. Conclusion

Iranian lawmakers have been influenced by jurisprudence, and explicitly, have introduced the expertise as one of the judge's knowledge evidence along with other statistics in Article 211 of this law, provided that typically seem Science. In French law, though in principle, the validity is with spiritual reasons (as in jurisprudence and Iran) but the examples can be cited, which expertise alone can be cited by the judicial authorities in this country (unlike Rights in Iran).

In this country, expertise is as a true and impartial result, in truth and obligations of experts stem from the important principles. "The legitimacy of obtaining evidence and manage it, objectivity and impartiality in the analysis of evidence for someone who wants to help the administration of justice is essential."

The result of this paper is that, expertise in Iran as one of Justice Statistics influenced by the jurisprudence is not considered an independent reason to prove the crime and it is anticipated only in the statistics, to satisfy the conscience of the judge. It cannot alone be ruled documentary, but in French law, they pay more attention to expertise and experts comments.

However, the importance of Iran's expertise in law is not less, according to provisions of the new law and in Iran's rights, among the four reasons, namely the confession, testimony, qasamah and the judge knowledge, the judge knowledge, is of great importance. After the establishment of the Islamic Republic of Iran, with the adoption of the Penal Code and the Law on Amendment of the Code of Criminal Procedure and subsequent laws, fundamental changes have been created in the system of crime and punishment and handling criminal matters, based on Islamic law and criminal law in Iran. Under the changes, the judge knowledge was anticipated in law, while, before the revolution, in legislation, there was no knowledge of the judge. Penal Code, enacted in 2013 has considered the judge knowledge valid in the general way, to prove all crimes.

However, it is suggested that in the new provisions of legislation, such as France, new evidence will be referred and gave more attention to obtaining reason to fill the gaps of Iranian legislator, in this context.

5.1 Recommendations

According to the study, the following recommendations seem to be:

1. Given the progress made, in all areas and new technologies, devoting to theological reasoning and proof value cannot answer many proofs of offenses. Therefore, it is necessary, Iranian legislator considers material evidence along with legal evidence, and consider them effective at proving crime.

2. In Iran, the material evidence, such as expertise is just as judicial jurisdiction and alone, cannot be useful in proving an offense, and it is remembered just as persuasive knowledge of the judge, that look of the legislation should be modified and expertise must be as independent reason in the rules.

3. With regard to criminal law in France, Iranian lawmakers have no technologies that have been used in the law of that country, in order to prove the crime, which is necessary to consider the new detection methods in this regard, in line with many countries.

4. In Iranian law, there is no task in particular, whether the official is obliged to call upon an expert or not, but in French law, correctly, judicial officials are obliged to quote the expert opinion and influence his view in sentencing that is necessary for Iranian legislators to clarify their homework in this regard.

5. The revision of penal and civil codes, in order to improve the probative value of expert opinion

6. Assigning judges to refer technical affairs to experts in texts and in legal bills

7. Assigning judges to provide technical and legal arguments for the rejection of expert opinions (Article 124-44 of the Criminal Procedure Code in the US)

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