

Iran

The judiciary in Iran is not free from government or religious influence. The judiciary and law enforcement agencies continue to serve as the main tools of oppression in Iran. Although the Constitution of Iran endorses some fair trial rights they are not respected in practice. In the Revolutionary Court the magistrate functions both as prosecutor and judge in the same case. The trials in these courts are therefore not fair and impartial.

The Islamic Republic of Iran was established in 1979 after the revolution that led to the fall of the Shah. The 1979 Constitution, as amended in 1989, is the constitution that applies.

President Mohammad Khatami was elected in 1997 for a 4-year term. Ayatollah Ali Khamenei is the Leader of the Islamic Revolution and head of state. Chosen by the Assembly of Experts after Ayatollah Khomeini's death in June 1989, it is legally forbidden to criticise his actions and he is, in practice, accountable to nobody. He is constitutionally the highest authority in the country and controls the judiciary and the state broadcaster, as well as the security and police forces, although he has granted nominal control of the police to Interior Minister Abdolvahed Musavi-Lari. The Leader is the commander-in-chief and he appoints the President after the people elect him.

The eligibility of candidates for presidency has to be confirmed by the Council of Custodians prior to election and endorsed by the Leader for the first term of presidency. The Council of Custodians consists of six theologians and canonists, nominated by the Supreme Leader or the Council of Leadership, and six Moslem jurists nominated by the Supreme Judicial Council.

The Leader can dismiss the President after the Supreme Court of Cassation has ruled that he has departed from his legal duties or after the Majlis has ruled as to his political incapability. The Leader also appoints the members of the Council of Custodians and appoints the highest-ranking official of the judicial bench.

The President of the Republic is second in line, after the Leader and according to Article 113 of the Constitution "shall have the responsibility for enforcing the Constitutional Law and coordinating the correlation between the three powers of the country". The President is also the chief of the executive power, "except for such matters of government that fall directly within the jurisdiction of the leadership".

The President is elected for a term of four years and can be re-elected for one more term. According to Article 115 of the Constitution the President has to be "of Iranian origin and nationality... faithful in the foundations of the Iranian Islamic Republic and the state religion". The President nominates the Prime Minister, who presides over the Council of Ministers.

The National Consultative Assembly, the Majlis, is the 270-seat unicameral legislative body. The representatives are elected for a term of four years. The Council of Custodians reviews legislation passed by the assembly for adherence to Islamic and constitutional principles.

The Supreme Council for National Security, presided over by the President, is entrusted, according to Article 176 of the Constitution, with the following tasks: determining the defence and national security policies within the framework of general policies determined by

the Leader; coordination of activities in the areas relating to politics, intelligence, social, cultural and economic fields in regard to general defence and security policies; and exploitation of materialistic and intellectual resources of the country for facing internal and external threats.

In February 1999, local elections took place in which reformists won. In February 2000 parliamentary elections took place and resulted again in a victory for the reformists.

Human Rights Background

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights entered into force in Iran in 1976. The two Optional Protocols were not ratified by the government, nor was the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment. The second and third periodic reports to the above mentioned treaties are long overdue.

The Committee on the Elimination of Racial Discrimination considered the compliance of Iran with the Covenant on the Elimination of all Forms of Racial Discrimination at its August 1999 session. The thirteenth, fourteenth and fifteenth periodic reports of the Islamic Republic of Iran were considered. The Committee, inter alia, expressed concern that:

the definition of racial discrimination found in, inter alia, Article 19 of the Constitution of the Islamic Republic of Iran and the 1977 Bill for the Punishment of the Propagation of Racial Discrimination, is not in complete conformity with the broad definition contained in Article 1, paragraph 1 of the Convention, which refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.

Freedom of expression was severely hampered in 1999, despite efforts by the government to create a more tolerant atmosphere. Several newspapers were closed and publishers were prosecuted.

Many dissident literary and political figures were killed in 1998 and 1999 and public outrage in Iran was enormous. Several government officials have been arrested in relation to these killings but at the time of writing no trial had yet begun.

On 8 July 1999 a peaceful student demonstration in the University of Teheran took place to protest against the closure of the pro-reform newspaper Salam. The day after the protest the university dormitories were attacked by uniformed troops. Reportedly, four students were killed, several hundred were arrested and hundreds more wounded. This attack was followed by more student protests all over Iran, which were forcefully broken up by groups belonging to the conservative stream in the government. The protests led to riots in which criminal elements were involved and which resulted in more unrest in the country.

Allegedly, four students have received the death penalty for their role in the demonstrations. The sentence was given by the Revolutionary Court after a secret trial. In February 2000, the trial against the former Teheran police chief and other police officers accused of beating the students began.

Widespread torture is reported in Iran, especially in prisons. Torture is often inflicted with total impunity for the perpetrators. The UN Special Representative on the Situation of Human

Rights in Iran reported in his report to the 2000 session of the UN Commission on Human Rights on the first official trial of a state official for engaging in torture.

The Special Representative expressed his concern about the re-promulgation of amputation as a punishment in the Procedures in the General and Revolutionary Courts published in Official Gazette 1591 of 10 October 1999.

Religious minorities in Iran face blunt discrimination, especially the Baha'is who are prosecuted and even sentenced to death for practising their religion. They have no legal rights in society and may not teach or practise their religion.

Trial of Mr. Amir-Entezam

The International Commission of Jurists (ICJ) expressed its concern over being barred from observing the trial of Mr. Abbas Amir-Entezam in Iran that began on 16 February 1999. The ICJ wished to attend the trial by sending an observer. The ICJ declared that "such a development is indicative of the fact that Mr. Amir-Entezam might not benefit from a fair trial".

The ICJ voiced its concern after having read in a report of the Iranian news agency IRNA that the head of the judiciary, Ayatollah Mohammad Yazdi, announced that Iran would not admit any foreign observer missions to attend judicial proceedings.

The principle foreseen in international human rights law that trials must be open to the public has never been understood as limiting attendance to only nationals of the country where the trial is being held. Such a limitation would be incompatible with the principle of universality of human rights and the general recognition that their respect is of international concern.

Mr. Amir-Entezam, a deputy prime minister of Iran just after the Islamic revolution of 1979, was detained for 17 years in the notorious Evin Prison in Tehran. He was arrested again in September 1998, after having made critical remarks about Mr. Assadollah Lajevardi - the then recently assassinated prosecutor and former chief warden at Evin. During a first court hearing, which Mr. Amir-Entezam was not allowed to attend, the judge reportedly stated that he did not know the reason for the detention of Mr. Amir-Entezam, but that he could only be released by a revolutionary tribunal. The detention of Mr. Amir-Entezam was then prolonged for 10 more months, apparently to receive accusations from the public against him. It has been reported since then that Mr. Amir-Entezam has serious health problems and that he was the victim of an assassination attempt during a transfer. It has also been said that he is denied proper medical treatment.

On the occasion of the 20th anniversary of the Islamic revolution, President Mohammad Khatami is reported to have urged respect for the Rule of Law in Iran. After such encouraging words, the ICJ appealed to the government and judiciary of the Islamic Republic of Iran to ensure a fair trial for Mr. Amir-Entezam, release him in the absence of valid legal charges and provide him with proper medical attention.

The Judiciary

According to Article 4 of the Iranian Constitution all laws are based on Islamic standards. According to Article 61 of the Constitution, the judicial power shall be exercised through

courts of justice which shall be formed according to Islamic criteria to reach a decision on the cases in dispute, protect the public rights, further the administration of justice and uphold the divine jurisdiction.

The judiciary and law enforcement agencies continue to serve as the main tools of oppression in Iran. The judiciary in Iran is not free from government and religious influence as can be seen from the structure. Women and men are not treated equally before a court as the testimony of a woman is worth only half that of a man.

Although the Constitution of Iran endorses some fair trial rights they are not respected in practice. The UN Special Rapporteur on Iran, who has been denied access to the country, has identified the following problems in the judicial system in his report to the 2000 session of the UN Commission on Human Rights:

There are references in other parts of this report to the shortcomings of the legal system. These include such critical matters as treatment in pre-trial detention, forced confessions, the overcrowding in the prison system, the continuing existence of detention centres outside the official prison system, and not least, the denial of fair trial. Some problems suggest that urgent attention must be paid to the judiciary itself. Unacceptable conduct includes: conduct such as denying the right of the defence to call witnesses, stating that judgement would be rendered following the submission of the defence's closing submission and then issuing the judgement without giving time for the submission, sitting in on a jury deliberation, making statements about cases which do not fall within the jurisdiction of the speaker's court, sending defence lawyers to jail for such action as protesting the judge's refusal to allow him to call witnesses. Such a list is not exhaustive and perhaps not representative. However, it does suggest to the Special Representative that very thoroughgoing reform of the judiciary is urgently required.

Structure of the Courts

Traditional courts deal with civil and criminal offences and Islamic Revolutionary Courts were established in 1979 to try offences against internal or external security, narcotics crimes and official corruption. Special Courts of the Clergy examine alleged crimes within the clerical establishment.

Military courts investigate crimes committed in connection with military or security duties by members of the army, the gendarmerie, the police and the Islamic Revolution Guards Corps. They are tried in public courts for common crimes or crimes committed while serving the department of justice in executive capacity.

The Court of Administrative Justice investigates complaints, grievances and objections of the people with respect to government officials, organs and statutes, under the supervision of the head of the judicial branch.

The Supreme Court supervises the correct implementation of the laws by the courts, ensuring uniformity of judicial procedure and fulfilling any other responsibilities assigned to it by law.

Islamic Revolutionary Courts

In the Revolutionary Court the magistrate functions both as prosecutor and judge in the same case. The trials in these courts are therefore not fair and impartial and, in addition, defendants do not have the right to confront their accusers. Moreover, secret or summary trials take place and defendants are often indicted with vaguely defined offences.

Special Courts of the Clergy

The Cleric's Court was set up by Ayatollah Khomeini soon after the 1979 revolution to try clergymen thought to be affiliated with the former regime. More recently, it has become an instrument for putting pressure on clerics who do not back the policies of Ayatollah Khamenei. The head of the court, Gholamreza Mohseni-Ezhei, was appointed by Mr Khamenei in December 1998 and reports directly to him.

The mandate of this court is to deal with all acts committed by clergy contrary to religious law; all disputes harmful to public security in which one of the parties is a member of the clergy; and all other cases entrusted to it by the Leader's office. The cases are to be argued on the basis of religious law. Appeals are heard by another chamber of the Cleric's Court; the Supreme Court has no jurisdiction in such cases.

The defence in a trial before a Special Court of the Clergy has to be chosen from designated clergy. The hearings are not public and decisions are not usually made public. The court apparently has authority to impose the death penalty.

The UN Special Representative on Iran commented on the Cleric's Court in his report to the 1999 session of the UN Commission on Human Rights. He said:

he continues to believe that at this point in the Islamic Republic's history, it is difficult to justify the continued existence of such an apparently arbitrary and secretive tribunal. The Special Representative recommends that it be abolished, or at least that it be converted into a commission charged with settling theological disputes in the narrowest sense. The Special Representative sees the appointment of a press jury in the Cleric's Court as an ominous expansion of its jurisdiction, and a prescription for further confusion in the press regulation regime established by the Press Law.

In the Special Representative's view the experience of many other countries with such tribunals suggests that they inevitably deny a defendant what is today recognised as a fair trial, and that they are thus instruments of denial of human rights.

Qualification, Appointment and Dismissal

The conditions and qualifications to be fulfilled by a judge will be determined by law, in accordance with religious criteria. The Supreme Leader appoints the head of the judiciary for a period of five years. He then appoints and dismisses the judges. Ayatollah Mohammad Yazdi was replaced as head of the judiciary in August 1999 by Ayatollah Mahmoud Hashami Shahroudi. The Chief of the Supreme Court and the Prosecutor-General are nominated by the head of the judicial branch for a period of five years, in consultation with the judges of the Supreme Court. Many graduate law students were employed by courts after short-term training.

Lawyers

Article 35 of the Constitution provides that "In all courts, the parties to a case shall be entitled to appoint an attorney and if they cannot afford a retainer, they shall be provided with means to appoint and retain an attorney".

In his report to the 1999 UN Commission on Human Rights, the UN Special Representative on Iran reported on a discussion with the President of the Central Bar Association Council, S.M. Jandaghi. Mr. Jandaghi said that:

to make lawyers more accessible, the Bar Association has established a Legal Assistance Department which provides legal advice and, if appropriate, assistance in obtaining the services of a lawyer. The Special Representative noted the apparent difficulties faced by some disadvantaged groups such as the Baha'is in obtaining a lawyer, particularly a good one. The President said that every lawyer is expected to take on four pro bono cases a year. In court proceedings in which a lawyer is required and is not already retained, the judge is expected to turn to the Association which will nominate four or five lawyers from among whom the judge will make a choice. With regard to the diligence and integrity with which such assigned lawyers advance their client's interest, the President acknowledged as possible the complaint brought to the Special Representative's attention of assigned lawyers seeming to play a passive role and, in some cases, being openly denounced in court by the accused as not telling the truth. He noted that there was a disciplinary court for lawyers within the Bar Association but it was only really becoming active since the election of the Bar Council.

In his report to the 2000 UN Commission on Human Rights the Special Representative reported on an open letter the Bar Association had sent in November 1999 to the head of the judiciary concerning the arrest of a lawyer representing a newspaper (see Cases below). Also in November 1999, the Bar Association sent a letter to the Majlis:

protesting a provision in a bill before that body that would empower the judiciary to authorise lawyers to practise, a provision that the Association asserted was in flagrant contradiction with the existing Bar Independence Act, which gives such a power exclusively to the Association.

The competency of the 24 members of the Iranian Bar Association was rejected by a verdict of the Special Judges Court (Dadgah Entezami Ghozzat) in February 2000 and therefore they could not become candidates for the Bar Association Directing Board.

Cases

Hojatoleslam Sayyid Mohssen Saeidzadeh (legal scholar, former judge): According to the Lawyers Committee for Human Rights, Mr. Mohssen Saeidzadeh was arrested without a warrant on 28 June 1998. It is believed that Mr. Mohssen Saeidzadeh was arrested because of his criticism of the lack of equality before the law for men and women. Mr. Mohssen Saeidzadeh's whereabouts are unknown at the time of writing.

Seyed Mohammad Seifzadeh (lawyer): As a lawyer for the banned "Neshat" newspaper, he was arrested in November 1999 on foot of a verdict of the Tehran Court (branch 1410) and charged with insulting the court. He was detained for 48 hours.