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Ministry of Immigration
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The Danish
Immigration Service

IRAN

Judicial issues

Joint report from the Danish Immigration Service and The Danish Refugee Council based on interviews in Tehran, Iran, and London, United Kingdom, 9 September to 15 September 2017 and 2 October to 3 October 2017

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Disclaimer

This report was written according to the EASO COI Report Methodology.¹ The report is based on approved notes from meetings with carefully selected sources. Statements from sources are used in the report and all statements are referenced.

This report is not, and does not purport to be, a detailed or comprehensive survey of all aspects of the issues addressed in the report and should be weighed against other available country of origin information on judicial issues in Iran, including legal document, summons, judgements, and bribery in the justice system, and consequences of not following issued judicial order and finally exit when released on bail.

The report at hand does not include any policy recommendations or analysis. The information in the report does not necessarily reflect the opinion of the Danish Immigration Service or the Danish Refugee Council.

Furthermore, this report is not conclusive as to the determination or merit of any particular claim to refugee status or asylum. Terminology used should not be regarded as indicative of a particular legal position.

¹ European Union: European Asylum Support Office (EASO), EASO Country of Origin Information report methodology, 10 July 2012. <http://www.refworld.org/docid/4ffc33d32.html>

Methodology

The report at hand is a product of a joint mission conducted by the Country of Origin Information Division, Danish Immigration Service (DIS) and the Danish Refugee Council (DRC) to Tehran, Iran and Ankara, Turkey, from 9 September to 16 September 2017 and a follow-up visit to London, Great Britain from 2 October to 3 October 2017.

The purpose of the mission was to collect updated information on five issues recurring in cases regarding Iranian asylum seekers in Denmark:

- Judicial issues
- Relations outside of marriage in Iran and marriages without the accept of the family
- Issues concerning persons of ethnic minorities, (Kurds and Ahwazi Arabs)
- House churches and converts
- Recruitment to the war in Syria.

The present report focuses on judicial issues, including legal documents, bribery in the justice system, consequences of not following a judicial order and exiting Iran when released on bail. The findings regarding the four other issues are reported in separate reports.

The terms of reference for the mission (TOR) were drawn up jointly by DIS and DRC, in consultation with the Danish Refugee Appeals Board as well as an advisory group on COI ("Referencegruppen").² The terms of reference are included at the end of the report (Annex C).

In the scope of compiling this report, the delegation consulted five sources in Tehran, comprising a representative from the Iranian authorities, two diplomatic representations, and an analyst as well as a legal source. The Danish Embassy in Tehran provided valuable assistance in identifying some of the interlocutors based in Tehran relevant to the terms of reference. The Danish Embassy provided assistance during the mission to Tehran and an official from the embassy also participated in the meetings held in Tehran. Due to the limited access to sources in Iran, the delegation also sought to consult two sources outside of Iran, these being a consulting agency and an international organisation based in London.

The sources interviewed were selected by the delegation based on their expertise, merit and experience relevant to the mission.

The sources consulted during the mission to Tehran and London, are listed in Annex A, and all interviews were conducted in English.

The sources were asked how reference might be made in the report. Most sources requested varying degree of anonymity for the sake of discretion and upholding tolerable working conditions. All sources are referred in the report according to their own request.

² The group consists of Danish Refugee Council, Amnesty International in Denmark, Danish Institute for Human Rights, Dignity, representatives of two Christian organizations ("Europamissionen" and "Åbne Døre"), the National Commissioner of Police and the Danish Bar and Law Society (representing asylum lawyers).

The interlocutors were informed about the purpose of the mission and the fact that their statements would be included in a public report. The notes from the meetings with the sources were forwarded to them for approval and amendment, allowing the opportunity to offer corrections of their statements. All sources, have approved their statements.

Two diplomatic sources consulted in Tehran provided background information to the report, but the notes from these meetings have not been included in the report, in accordance with the sources. In addition, the delegation met with the National Institute of Population Research in Iran which provided background information not directly linked to the TOR. Finally, the delegation paid a courtesy visit to the department for consular affairs in the Iranian Ministry of Foreign Affairs. Records from these two meetings are not included, either.

The report is a synthesis of the sources' statements, and does thus not include all details and nuances of each statement. In the report, care has been taken to present views of the sources as accurately and transparently as possible. All sources' statements relevant for the topic of the report have been extracted from the full meeting note with each of the particular sources and incorporated into the report, and are found in Annex B of this report.

Paragraphs in the meeting notes in Annex B have been given consecutive numbers, which are used in the report when referring to the statements of the sources in the footnotes. The intention hereby is to make it easier to find the exact place of a statement in each note.

The research and editing of this report was finalised by the beginning of January 2018.

The report is available on the websites of DIS, <https://www.nyidanmark.dk/da/Ord-og-begreber/US/Asyl/Landerappporter/> and DRC, <https://flygtning.dk/nyheder-og-fakta/publikationer/rappporter> and thus available to all stakeholders in the refugee status determination process as well as to the general public.

1. Judicial issues

1.1 Legal documents

Legal documents are issued in a uniform way and the issuance of the documents is made in an electronic system.³ The main rule is that all legal documents are produced electronically in a uniform format or template in the entire country.⁴ Two sources highlighted that issuing legal documents electronically in a uniform way is implemented in the bigger cities, and there may be areas of the country where the electronic system has not been rolled out yet.⁵ In emergency cases, a legal document can be handwritten. However, the format will, in this case, still be the same as if the document was issued electronically.⁶

Electronic access to court cases is available.⁷ Parties to a case can access files regarding the specific case through the database.⁸ According to a source, if a person is involved in a case, he/his lawyer can have access to the database with a password and user name provided by the court.⁹ Another source noted that all parties to a specific court case will get a case number to access the case files electronically.¹⁰ There is no public access to the electronic court cases database.¹¹

1.1.2 Summons

Generally, summons will be delivered to the person concerned in a written form.¹² Delivery of summons will be made by a process server.¹³ A process server is a mail man from the judiciary who delivers court papers, a source explained.¹⁴ If the person who has been summoned is not present at his/her address, and the person lives with his/her parents or relatives, the summons will be delivered to the parents or relatives by the process server who will check the name of the person concerned and the family relationship between the two. If the process server does not find anyone at the address, the summons will be put on the door after being signed by the process server.¹⁵ If the address of the person concerned is not known, the summons will be published in a national newspaper and then considered served.¹⁶ Summons can as well be served at the working place of the person concerned. In this case it will be delivered to the Human Resources Department.¹⁷

³ A Western embassy (1): 3; an anonymous analyst: 19; Director of the Judiciary for International Affairs: 46

⁴ An anonymous analyst: 19; a Western embassy (1): 3

⁵ An anonymous legal source: 31; Director of the Judiciary for International Affairs: 46

⁶ A Western embassy (1): 3

⁷ An anonymous legal source: 31; a Western embassy (1): 4; an anonymous analyst: 24; Director of the Judiciary for International Affairs: 50

⁸ An anonymous legal source: 31; a Western embassy (1): 4; an anonymous analyst: 24

⁹ An anonymous analyst: 24

¹⁰ A Western embassy (1): 4

¹¹ A Western embassy (1): 3; an anonymous analyst: 24

¹² Amnesty International: 14; an anonymous analyst: 21; an anonymous legal source: 32; Middle East Consultancy Services: 58; Director of the Judiciary for International Affairs: 47

¹³ An anonymous analyst: 21; an anonymous legal source: 32

¹⁴ An anonymous analyst: 21

¹⁵ An anonymous analyst: 21; Director of the Judiciary for International Affairs: 47

¹⁶ An anonymous legal source: 32; Director of the Judiciary for International Affairs: 47

¹⁷ An anonymous analyst: 21; Director of the Judiciary for International Affairs: 47

The time process for issuing a summons, receiving it and the court hearing, is two weeks to one month, a Western embassy (1) informed the delegation.¹⁸

Summons will only be issued once in civil claims and in most penal law suits, according to an anonymous analyst.¹⁹ Whether the judge will issue a new summons, depends on the type of the case, a Western embassy (1) noted.²⁰

Amnesty International noted that written summons are the only legal means to summon someone.²¹ However, the source added that deviation might occur; sometimes a written summons is not delivered, but people knowing the system will typically insist on receiving the summons in a written form. In practice, the authorities attempt to summon people via phone or other means.²² An anonymous analyst noted that summons might be sent to the person concerned, and a text message may be sent to his/her inbox. However, this happens basically only with lawyers who have an electronic account with a registered password and user name. Summons are too long to be sent by a short text message.²³

An anonymous legal source stated that in some cases, such as sensitive political and national security cases, the accused can be put under arrest without summoning. The source added that the Revolutionary Court does not necessarily follow and comply with the legal summoning procedures.²⁴

1.1.3 Judgements

Judgements are served in writing²⁵. The person involved and his/her lawyer will receive the judgement.²⁶ An anonymous analyst explained that people entitled to receive a judgement includes the litigants, claimants, defendants and lawyers Counsel.²⁷ Director of the Judiciary for International Affairs mentioned that if the person concerned is abroad when the judgement is issued, the process server will communicate it to his/her family.²⁸

Family members can in certain cases receive a copy of the judgement.²⁹ If a person lives with his/her parents, a parent might be able to obtain a copy on behalf of the person by claiming that delivery failed, a source noted.³⁰ A family member cannot afterwards go to the court and retrieve the judgement or a copy of it.³¹ However, if the judgement is lost, the court clerk might issue a non-certified copy without a stamp

¹⁸ A Western embassy (1): 6

¹⁹ An anonymous analyst: 26

²⁰ A Western embassy (1): 10

²¹ Amnesty International: 14

²² Amnesty International: 14

²³ An anonymous analyst: 21

²⁴ An anonymous legal source: 32, 33

²⁵ An anonymous analyst: 22; an anonymous legal source: 34; a Western embassy (1): 5; Director of the Judiciary for International Affairs: 48

²⁶ A Western embassy (1): 5; Director of the Judiciary for International Affairs: 48

²⁷ An anonymous analyst: 22

²⁸ Director of the Judiciary for International Affairs: 49

²⁹ An anonymous analyst: 22; Director of the Judiciary for International Affairs: 49

³⁰ An anonymous analyst: 22

³¹ Director of the Judiciary for International Affairs: 49

(i.e. seal). This copy cannot be used as formal documentation of the judgement. Usually, it is difficult to have a second copy issued, a source explained.³²

1.2 Bribery in the justice system

Bribery in the justice system occurs.³³ When it comes to bribery in political cases, two sources explained that it is difficult to use bribe in such cases;³⁴ political cases are handled by the Revolutionary Court.³⁵

Bribery can influence the ruling of a judge.³⁶ According to a Western embassy (3) influence is more important than money.³⁷ The source pointed out that bribery is more common in first instance cases; 46 percent of court cases end at the first instance.³⁸

An anonymous analyst explained that it is difficult to obtain a legal document by bribe as courts are under surveillance, and there are cameras in the court room; the courts have their own security system called *Hirasat*, which reports to the *Hefazat Ettelaat* or counter-intelligence of the judiciary.³⁹ In contrast, a Western embassy (1) said that obtaining a legal document with false information is probably possible.⁴⁰

Judges are brought to trial for corruption.⁴¹ An anonymous analyst mentioned that every year, the spokesman for the judiciary maps the dismissed, sanctioned, etc. judges due to bribery. According to statistics, more than 100 judges were laid off in 2016.⁴² Middle East Consultancy Services added that The High Tribunal for Judicial Discipline oversees offences enacted by judges. The source added that in 2015 several public declarations were issued related to the removal of 50 judges, due to corruption.⁴³

1.3 Consequences of not following issued judicial orders

As regards consequences of not following a judicial order, two sources stated that in civil matters the person concerned will have an interest in showing up in the court.⁴⁴ Absence from court in civil cases will not result in a warrant of arrest, director of the Judiciary for International Affairs explained.⁴⁵

In criminal cases, a warrant of arrest may be issued if the person concerned does not show up in court.⁴⁶ An anonymous legal source highlighted that as per Article 179 of the Criminal Procedural Law, an arrest warrant can be issued for an accused that refuses to present himself to the court without a plausible

³² An anonymous analyst: 23

³³ A Western embassy (1): 8; a Western embassy (2): 13; an anonymous analyst: 25; an anonymous legal source: 35

³⁴ A Western embassy (1): 8; an anonymous analyst: 25

³⁵ An anonymous analyst: 25; an anonymous legal source: 38

³⁶ An anonymous analyst: 25; a Western embassy (1): 8

³⁷ A Western embassy (1): 8

³⁸ A Western embassy (1): 8

³⁹ An anonymous analyst: 25

⁴⁰ A Western embassy (1): 9

⁴¹ An anonymous analyst: 25; an anonymous legal source: 35; Middle East Consultancy Services: 60

⁴² An anonymous analyst: 25

⁴³ Middle East Consultancy Services: 60

⁴⁴ An anonymous analyst: 26; Director of the Judiciary for International Affairs: 51

⁴⁵ Director of the Judiciary for International Affairs: 51

⁴⁶ An anonymous legal source: 36; Director of the Judiciary for International Affairs: 51

reason.⁴⁷ An anonymous analyst added that if the defendant does not show up in the court or does not send in a brief or a defence statement to deny charges or does not name counsel for legal representation, it will be considered a contempt of court.⁴⁸

Amnesty International mentioned that if someone has been summoned for interrogation and does not show up, the authorities will probably arrest the individual or put him/her under such a state of pressure (surveillance, intimidating phone calls) that he/she will eventually appear.⁴⁹

A court case may proceed if the defendant does not show up in court, and a judgement in absentia will, in this case, be issued.⁵⁰ A source added that if a person is sentenced in absentia, his/her family and lawyer will then receive the judgement.⁵¹

1.4 Exit when released on bail or sentenced

A travel ban will not be issued automatically after a sentence,⁵² as issuing a travel ban depends on the concrete case.⁵³ A judge will not necessarily issue a travel ban in civil cases,⁵⁴ and when it comes to criminal cases, the prosecutor has to argue for a travel ban, one source added.⁵⁵

Debts cases will trigger a travel ban.⁵⁶ Other cases where a travel ban will be issued are cases related to national security⁵⁷ as well as in political cases.⁵⁸ A travel ban will also be issued if there is no access to the accused person and until the accused person contacts the relevant authority.⁵⁹

However, in serious criminal cases, where the judgement is ruled in absentia, a travel ban will be issued automatically.⁶⁰

A person who has been summoned can leave the country unless the judge has issued a travel ban.⁶¹

There is a database at the Prosecutor's office containing people enlisted on the travel ban list.⁶² The database is connected to the border authorities.⁶³

⁴⁷ An anonymous legal source: 36

⁴⁸ An anonymous analyst: 26

⁴⁹ Amnesty International: 16

⁵⁰ Middle East Consultancy Services: 58; Director of the Judiciary for International Affairs: 51; Amnesty International: 15; an anonymous legal source: 36; an anonymous analyst: 26; a Western embassy (1): 12

⁵¹ A Western embassy (1): 12

⁵² Director of the Judiciary for International Affairs: 53; a Western embassy (1): 11; an anonymous analyst: 27
anonymous legal source: 37

⁵³ An anonymous analyst: 27; Director of the Judiciary for International Affairs: 53; an anonymous legal source: 37

⁵⁴ An anonymous legal source: 37; an anonymous analyst: 27

⁵⁵ An anonymous legal source: 37

⁵⁶ An anonymous analyst: 27; an anonymous legal source: 39; Director of the Judiciary for International Affairs: 53

⁵⁷ Director of the Judiciary for International Affairs: 53

⁵⁸ An anonymous analyst: 27

⁵⁹ An anonymous legal source: 39

⁶⁰ An anonymous legal source: 44

⁶¹ A Western embassy (1): 11; Director of the Judiciary for International Affairs: 52

⁶² An anonymous analyst: 27; Director of the Judiciary for International Affairs: 56

⁶³ An anonymous analyst: 27; an anonymous legal source: 45; Director of the Judiciary for International Affairs: 56

One source added that when judges issue travel bans, these are received by other authorities without delays/in "real time". Furthermore, exiting the country legally when a travel ban has been issued is next to impossible. According to the source, the security at the border is very strict; additionally, the borders are highly controlled by the military. At the same time, it would be very costly to arrange an illegal departure, as it would require a high degree of complicity.⁶⁴

Exiting the country legally when released on bail depends on whether a travel ban has been issued or not, according to two sources.⁶⁵ Director of the Judiciary for International Affairs informed the delegation that bail does not automatically lead to a travel ban. The judge will consider a travel ban if the prosecutor requests it.⁶⁶ In contrast, Middle East Consultancy Services stated that if a person is imposed a bail, he/she would not be able to leave the country legally.⁶⁷ An anonymous analyst noted that if a person who is out on bail leave the country, the person or his/her family will lose the surety provided.⁶⁸

An anonymous analyst mentioned that if a sentence has been given to a person who has left the country, the case will not be written off, but remains on the penal record of this person until the sentence has been implemented. After prosecution and indictment, the sentence must be enforced and there will be no statute of limitations or time bar.⁶⁹ A Western embassy (1) noted that if a trial has not yet begun, when an accused person leaves the country, the case will not proceed/ be resumed if the accused returns to Iran. However, this depends on the concrete case.⁷⁰

⁶⁴ An anonymous analyst: 27

⁶⁵ Amnesty International: 18; Director of the Judiciary for International Affairs: 54

⁶⁶ Director of the Judiciary for International Affairs: 54

⁶⁷ Middle East Consultancy Services: 62

⁶⁸ An anonymous analyst: 29

⁶⁹ An anonymous analyst: 30

⁷⁰ A Western embassy (1): 12

Annex A: Consulted sources

1. A Western embassy (1)
2. A Western embassy (2)
3. Amnesty International
4. An anonymous analyst
5. An anonymous legal source
6. Director General of the Judiciary for International Affairs, Iran
7. Middle East Consultancy Services

Annex B: Meeting notes

Meeting with a Western Embassy (1)

Tehran, 11 September 2017

Judicial issues

Legal documents

1. The source informed that it frequently receives Iranian documents, and the source's experience is that the documents in 90 % of the cases are false. The embassy elaborated that it only receives documents which are suspected to be false. The embassy did not know how many documents overall are considered genuine and therefore are not sent for authentication.
2. Furthermore, the source experienced a high occurrence of false documents in visa applications. Generally, there is a bad tradition in Iran with regards to documents. It is possible to get all the wanted documents; documents can be bought or obtained from the internet.
3. Regarding electronically issued legal documents, the Western embassy (1) informed the delegation that the documents are issued electronically in a unified system, but the source could not say for sure if all legal documents today, are issued electronically. In for instance emergency cases, a document from the regions could be hand written. However, the document format in these cases would be the same as if the document was issued electronically. The main rule is that all documents are procured electronically and in a unified system today. Databases with legal documents are not public; however, lawyers with the specialized skills have the knowledge to verify these documents.
4. All judicial cases have a file number which the accused person and his lawyer will receive. Two years ago, the electronic system has been unified and all the relevant parts in a specific court case will get a case number to access the case files electronically.
5. Regarding who will receive a judgement, the source said, it will be written and given to the involved person and his lawyer. Only authorized persons are entitled, to receive a copy of the judgement.

Summons

6. According to the Western embassy (1) it is only the judges and the justice system, that have the competence to issue summons in Iran. The time procedure for issuing a summons, receiving it and the court hearing, is two weeks to one month.
7. Regarding summons the source stated that not all offices have electronic documents. Some places still have hand written summons. A handwritten document is not necessarily false.

Bribery in the justice system

8. Regarding bribery in the justice system, the Western embassy (1) said it is a well-known phenomenon. Bribery is more common in first instance cases; 46 percent of court cases end at the first instance. The source explained that influence is more important than money, but in general, bribery is more difficult in political cases.
9. On the question of the possibility of obtaining an original legal document with false information, the Western embassy (1) said it is probably possible to obtain any kind of document. It is all about relations and political interests.

Consequences of not following issued judicial order

10. It is up to the judge to take a decision in cases where the accused person does not show up in the court after a summons has been issued. Whether the judge will issue a new summons or not, depends on the type of the case. If the accused person does not show up in for instance a case regarding consumption of alcohol, the judge may issue a sentence in absentia. In alcohol cases, the judge can issue a sentence of 80 lashes, but in most cases the accused person will pay a fine instead of receiving the 80 lashes.

Exit when released on bail or sentenced

11. A person cannot exit the country if he is involved in an ongoing court case. The border police will be contacted if the Iranian authorities issue a travel ban in the specific case. If there is no travel ban, the person can exit the country. The source explained that a person can exit the country even though he has been summoned; but again it depends on the case and the judge.
12. Generally, if a trial has not yet begun, the case will not proceed, if the accused person exits the country and returns. However, the source could not reject that a person will be prosecuted upon return; there is arbitrariness in the justice system and it also depends on the concrete case. If it is a serious case, the judge might sentence the person in absentia. The family and the lawyer will then receive the judgement.

Meeting with a Western Embassy (2)

Tehran, 10 September 2017

Judicial issues

Bribery in judicial system

13. Bribery is very widespread in all society and is not getting better. This does not mean that using bribe will help you in a specific court case.

Meeting with Amnesty International

London, 3 October 2017

Judicial issues

Summons

14. On the question about how summons are delivered, Amnesty International said that the person concerned receives a written summons. Deviations might occur; sometimes a written summons is not delivered, but people knowing the system will typically insist on receiving the summons in a written form. Written summons are the only legal means to summon someone – in practice the authorities attempt to summon people via phone or other means. These are not legal. Not everyone knows or asserts their right to demand a legal summons. If you are called in for interrogation, lawyers routinely are not permitted inside the interrogation with you, and never when someone is charged with national security offenses.

Consequences of not following issued judicial order

15. If the person concerned does not respond to the summons, the court can proceed with an investigation without the presence of the person concerned. Frequently, the investigation has already been ongoing when an individual is summoned. Amnesty International informed the delegation it is aware of cases where trials in absentia have taken place.

16. However, the consequences of not following an issued judicial order would depend on the profile of the case. If someone has been summoned for interrogation and does not show up, the authorities will probably arrest him or the authorities will put the individual under such a state of pressure that they will eventually go in (surveillance, intimidating phone calls).

17. If someone is out on bail and does not report to the court as required, his bail will be revoked and he will be arrested.

Exit when released on bail or sentenced

18. Regarding exiting the country when released on bail, it depends on whether someone has a travel ban or not. The source informed it is more likely to leave the country illegally than legally, when released on bail, regardless of whether you have a travel ban or not. Exiting the country legally requires a valid passport. Passports in Iran are valid for five years and then renewed, and the renewal process is lengthy and could be difficult, if you have an ongoing case.

Meeting with an anonymous analyst

Tehran, 10 September 2017

Judicial issues

Legal documents

19. Legal documents have the same format in all areas of Iran. The source emphasized that Iran is not a federal state but a unitary state with a very centralized government. All documents are issued in a uniform way and there will be no departure from the established format or templates in any area of Iran. The issuance of documents is basically made in an electronic system, also in the countryside of Iran.
20. The source was of the opinion that most false documents are produced outside Iran and in European or other countries by organized gangs or human traffickers. Previously, some false court documents were produced inside Iran sometimes by complicity of court clerks or administrative staff, who smuggled originally genuine but irrelevant documents (either belonging to other cases or in the form of blank stationery to be then filled in by forgers and customized to their specific needs) out of the courts, but since court documents are now produced in an electronic system, this has stopped. Now forgers use such software as Photoshop to fabricate documents. Low ranking staff of penal Courts had previously been tempted to provide false documents. However, since legal documents have been produced in an electronic form since 2005-2006 this is no longer an issue according to the source. The source added the shift to electronic system was gradual rather than happening overnight.

Summons

21. Summons might be sent to the person concerned, and a text message may be sent to their inbox. However, this happens basically only with lawyers who need to have an electronic account with a registered password and user name. Summons are too long to be sent by a short text message not to speak of risk of exposure and falling into wrong hands (i.e. other than the person originally destined to) by hand delivery. Summons are also printed out and provided in a printed form to the person concerned. When printed out, the summons will be delivered by a so-called Process Server – a mail man from the judiciary who delivers court papers in duplicate one counterpart of which is delivered after being signed and dated by the process server while on the other counterpart, signature of the person receiving the document is collected which latter copy is then sent back to the court to be kept there as proof of service i.e. delivery. If the person who has been summoned is not present at his/her address, and the person lives with his/her parents or relatives, the summons will be delivered to the parents or relatives of apparent legal age and sound mind with mention, by the process server, of the name of the person concerned and the family relationship existing between the two. If the Process Server does not find anybody at the address, the summons will be delivered under so-called “constructive service”, i.e. the summons will be put on the door after being signed and dated by the process-server. Summons to someone in the military would be delivered to the commander in barracks. It can also be delivered to someone’s workplace – in that case to the Human Resources

Department or Personnel Department. If the company itself is the summoinee, it will be primarily delivered to the managing director.

Judgements

22. All judgements are provided in computer processed writing, and all parties involved in a case – litigants, claimants, defendants and lawyers Counsel - can request a copy if the service of judgement has failed. The number of copies provided will be equal to the number of parties involved in a case plus one to be kept on file. One copy of the judgement is going to the court registry. The court clerk (not the judge) will provide a certified copy to the parties involved. Only the lawyer or the party to the case can obtain a copy, not a family member. However, if a person lives with his/her parents, a parent might be able to obtain a copy on behalf of the person involved in a case by claiming that delivery failed and the copy left at the door was taken away by the blowing wind or went missing or was shredded by the pets.
23. Judgements will be delivered only once. If the judgement is lost or went missing, the court clerk might issue a non-certified copy without a stamp (i.e. seal). This copy cannot be used as formal documentation of the judgement. Usually, it is difficult to have a second copy issued.
24. A national database of criminal records and convictions (sentencing) is available. There is no public access to judgements, but if a person is involved in a case, he/his lawyer can have access with a password and user name provided by the court. The person or lawyer will only be able to access the specific file regarding his case. The lawyer will receive a password by text message so he can log on to the database.

Bribery in the justice system

25. It is very difficult to obtain legal documents by bribe. The courts are under surveillance, and there are cameras in the court room; the courts have their own security system called *Hirasat*, which reports to the *Hefazat Ettellaat* or counter-intelligence of the judiciary. However, people with money manage sometimes to bribe judges to influence the ruling of the judge. This would not be possible in a political case or a case related to state security. Political cases are dealt with in Revolutionary Courts which are more dogmatic in their rulings and conduct. Some judges in Public Courts manipulate rulings. Asked about the possible consequences for judges involved in corruption, the source informed the delegation that it happens that judges are brought to trial for corruption. Every year, the spokesman for the judiciary maps the dismissed, sanctioned, etc. judges due to bribery. According to statistics, more than 100 judges were sacked last year.

Consequences of not following issued judicial order

26. In civil claims and basically most penal law suits the person will only be summoned once; in civil cases, it would be assumed the person has an interest to show up. In criminal cases, if the person (i.e. defendant because the plaintiff has a logical interest in showing up) does not show up in the court or does not send in a brief or a defence statement to deny charges or does not name counsel for legal representation, it will be considered a contempt of court which could also lead to a presumption of guilt. If delivery of summons or publication of notice in a wide circulation newspaper (if defendant is on

the run and is of unknown whereabouts) is established by the judge and non-appearance is likely to result judgement in absentia (by default).

Exit when released on bail or sentenced

27. In cases where a person has been summoned to the court or has received a sentence, the judge might issue a travel ban. The judge will inform the passport office and the concerned person will be enlisted on the so-called *Ne Exeat Republica* list, which means he/she cannot exit the country. In such cases, it is next to impossible for the person to leave the country legally. According to the source, the security at the border is very strict; furthermore, the borders are highly controlled by the military. At the same time, it would be very costly to arrange an illegal departure, as it would require a high degree of complicity. Courts and passport offices and the police are linked by an intranet. When judges issue travel bans, these are received by the other authorities without delays/in”real time”. The source added issuing a travel ban always depends on the concrete case; in political cases, a travel ban will be issued, but not necessarily in all penal or minor civil cases. However, the source added as this regard in minor debts, even those arising from demand of payment of mahr or marriage portion by a wife, can also lead to imposition of a travel ban.
28. Bail may be given by word (*parole d’honneur*) for relatively non-serious cases through a person who stands surety. i.e. the person will provide a pay slip showing his monthly income or, in the event of more serious cases, by providing a title deed to a property, a business license or similar. Bail is usually not accepted in cases related to state security. Cases of state security include a broad range of activities including espionage, conspiracy against the state, armed rebellion against the state including for criminal motives such as organized armed robberies or even sometimes writing a critical (considered as calumnious) articles in the press or the social media which offense can be categorized as engaging in hostile campaign against the state to tarnish its image. Attorneys defending critical cases, religious activities, human rights activities etc. need, theoretically, to be approved by the Judiciary i.e. at least at the preliminary investigation level, i.e. they need to be selected from a list of handpicked lawyer having been approved by the Head of the Judiciary and this in accordance with the *nota bene* under Art. 48 of the new Penal Procedure Code whose provisions have provoked anger of the Bar Association as a twist and turn to the liberty of appointing counsel. The concept of State security has a very broad and arbitrary interpretation and could sometimes englobe offenses blamed on journalists in the exercise of their duties on charges of “hostile propaganda and smear campaign against the state”. The source emphasized that the numbers of ordinary penal cases by far outnumber the political cases. Alcohol consumption and apostasy are not considered as state security matters but rather considered as “crimes against God” for which you would be prosecuted. For apostasy, there is no law article and provisions of fatwa by religious authorities could apply to punish the one guilty of apostasy.
29. If a person who is out on bail nevertheless manages to leave the country, he or his family will lose the surety he has provided – i.e. his apartment or property for which the title deed was given in pledge.
30. If a sentence has been given to a person who has left the country, the case will not be written off, but remains on the penal record of this person until the sentence has been implemented. After prosecution and indictment, the sentence must be enforced and there will be no statute of limitations or time bar.

However in crimes other than those categorized as “sins against the divine rights”, such as taking alcohol, unlawful sex etc. which are not dealt with under the sharia, statute of limitation could apply beyond a certain lapse of time between commission of the act and its persecution but not after its persecution.

Meeting with an anonymous legal source

Tehran, 13 September 2017

Judicial issues

Legal documents

31. The source stated there is a database for court cases which almost covers the whole country. The parties’ to the case as well as the lawyers in a case have access to documents related to cases they are handling. The courts have the full overview. The bigger cities will have the same format for legal documents.

Summons

32. Summoning of the accused is being conducted through a written summons by judiciary officers (process servers) appointed to carry out court summons and serve court orders. In cases of lack of accused’s address, summoning will be conducted through publication of a notice in a national newspaper. However, in some cases, such as sensitive political and national security cases, the accused can be put under arrest without summoning.

33. The source informed that The Revolutionary Court does not necessarily follow and comply with the legal summoning procedures.

Judgements

34. All judgements should be served in writing, but the source stated that this is not always the case. This could concern sensitive political cases. Sometimes people are arrested without being informed about the charges but only in rare sensitive cases. In these cases, people are not given a lawyer. If lawyers try to intervene they risk imprisonment themselves.

Bribery in the justice system

35. The source stated that bribery of judges occurs, but things are under more scrutiny these days. The source did not have any personal experience, but stated that corruption and bribery are being treated as ordinary matters inside the Iranian judicial system, especially in the city of Tehran. However, due to lack of open official discussions about such issues, it is practically impossible to offer statistics as to the prevalence of such practices.

Consequences of not following issued judicial order

36. Consequences of not following judicial orders may vary between receiving or being subject to a judgement in absentia to fines and even imprisonment. For example, as per Article 179 of the Criminal

Procedural Law, an arrest warrant can be issued for an accused who refuses to present himself to the court without a plausible reason as to such refusal.

37. If you have been summoned for civil matters and the other party would have a loss if you do not show up, the judge could issue a travel ban. If a person has received a sentence in a civil case, a travel ban would not necessarily be issued; it depends on the case. In criminal cases the prosecutor would have to argue for a travel ban, it does not automatically get issued.

Exit when released on bail or sentenced

38. The source stated that in political and serious criminal cases, the person concerned would not be let out on bail. Additionally, political cases are not handled by the public courts; it is cases handled by the Revolutionary Court.
39. Travel bans in Iran are being issued by the judiciary in important cases; at the courts discretion and based on the importance of the crime/felony. It will also be issued if there is no access to the accused and until the accused presents himself to the officials; and in financial cases where the person against whom a travel ban has been issued has an outstanding debt without sufficient collateral or has not made arrangement for settlement pursuant to a judgement award.
40. The court is authorized to issue a travel ban for the accused to prevent him from leaving the country.
41. Travel bans can also be utilized as complementary/secondary punishments by the court in which cases the duration of the travel ban – except in special cases – cannot be more than 2 years (Article 23 of the Penal Code).
42. Since travel bans in Iran in general are being used as a preventive measure to secure access to the accused, then it is unlikely that a person can leave the country if a travel ban has been issued against him, unless the court issuing the ban or a higher court reverses the travel ban or issues an order for the accused to be able to leave the country.
43. As to cases where the accused has served his/her penalty, in principle, he/she shall be deemed relieved of all accusations and therefore free to leave the country; however, in practice, the approach of the judiciary as well as the Government officials may not be aligned with the rule of law, especially in regarding political offences.
44. In serious criminal cases if a judgement is ruled in absentia, it would lead the judge to automatically issue a travel ban.
45. It depends on the case whether a person can make it out of the country before the travel ban has been communicated to the border. There is an electronic alert system between the court and the border.

Meeting with Director General of the Judiciary for International Affairs, Iran

Tehran, 13 September 2017

Judicial issues

Legal documents

46. Not all but almost all of the courts and dispute settlement counties in Iran are connected to an electronic system. Previously it was not the case but now there is a program to uniform all documents. Every city and every region had its own format, but the different kind of forms is now being uniformed. The big cities are connected to the electronical system and the smaller cities and regions are gradually being connected. The electronical uniformity began in 2010 but is not implemented in the entire country.

Summons

47. Summons are in a uniform format. Summons have their own act with special articles regarding the manner of summoning. At first the summons will be served to the person related to the case to get his/her signature. If the person is not at the address, the members of the family or household can receive the summons if they confirm, that the person related to the case lives at the address. If nobody is at the address or nobody opens the door, the service officer checks that the address is correct. If the address is correct, he can attach the summons to the door. Then he writes on a second copy of the summons how it has been served and reposts this to the court. If the address is not correct, the service operator reports this to the court. If the address is not known the summons will be published two times in the newspaper and then considered served. The summons can also be served at the working place of the person concerned. Then it is delivered to the human resource department.

Judgements

48. There will always be a written judgement. The judgement is served in the same manner and after the same procedure as the summons. The judgement will always be served to the lawyer of the case as well.

49. If the person concerned is abroad e.g. in Europe when the judgement is issued, the Service Office will communicate it to his family. However, a family member cannot afterwards go to the court and retrieve the judgement or a copy of it.

50. There is no national database with all issued judgements; every court branch has its database with access to its own judgements.

Consequences of not following issued judicial order

51. If the person concerned does not show up in cases of criminal matters, and the court is sure he has been summoned properly, the court will issue a warrant of arrest. In civil matters, the person concerned typically show up in the court; if he does not, the court will not issue a warrant of arrest. The case will proceed, and the court will issue its order without the presence of the person concerned.

52. A person who has been summoned can leave the country unless a judge has ruled against it. In certain cases, for instance cases against tax debtors, the judge is obliged to issue a travel ban.

Exit when released on bail or sentenced

53. If a judgement has been served it does not automatically prevent a person from leaving the country. Issuing a travel ban depends on the court, but for some cases mentioned in the law, the judges are obliged to issue a travel ban, for instance tax debtors and cases related to national security. The judge would need to specifically decide on a travel ban in each case.

54. Bail does not automatically lead to a travel ban. The judge will consider a travel ban if the prosecutor asks for it but it does not always lead to an issue of a travel ban.

55. If a travel ban is issued before a person has received his/her passport, he will not be able to receive the passport. If the travel ban is issued after the person has received a passport, he/she will be stopped at the border.

56. There is a database at the Prosecutor's office of the people who have a travel ban which is connected to the border authorities.

Meeting with Middle East Consultancy Services

London, 3 October 2017

57. Since the year 2000 Middle East Consultancy Services (MECS) has been serving the public and private sectors at local and international levels, including UK law firms, the UK Home Office, international clients as the Belgian Interior Ministry, the Dutch IND, UNHCR, and Australian, Dutch and Swedish solicitors. The primary objective of MECS is to provide research and analysis to enhance the quality of decisions made at senior levels of the public and private sectors, nationally and internationally. MECS' reports cover the following areas of expertise: Research, Country Expert Reports, Nationality/ Ethnicity disputes and Authentication. Among the countries MECS covers is Iran.

Judicial issues

Summons

58. Courts issue summons to individuals accused of criminal activity. Typically, court summons are physical delivered to the address of the person concerned, or to a family member or a neighbour. As a last resort, a court summons might be published in a public newspaper, or delivered in the mailbox of the person concerned. In case the summoned person does not react on the court summons, the trial might commence in his/her absentia.

Bribery in the justice system

59. According to MECS, the judicial system in Iran is limited, and only men can be judges. The selection of judges happens through the so-called *Gozinesh*, which means the judges are appointed for their political and religious beliefs, and not their merits.

60. High Tribunal for Judicial Discipline oversees offences enacted by judges. MECS added the Supreme Leader Ali Khamenei is aware of the corruption in the Iranian judiciary, and in 2015 several public declarations were issued related to the removal of 50 judges, due to corruption. However, politically sensitive cases are often determined by the intelligence services, and not the judiciary. Special Court for the Clergy is utilised as a political tool against reformist and oppositional clerics. Furthermore, rich and powerful individuals are often spared prosecution, and fare well in trials.

Exit when released on bail or sentenced

61. Bail is not allowed for certain crimes such as political and national security offences. Bails are set at judicial discretion; and are often set at high amounts from 20.000 EUR to 700.000 EUR depending on the offence. The court might issue a travel ban in addition to the sentence, or after a sentence has been issued.

62. If the person concerned has been imposed a bail, he/she is not able to leave the country legally. However, the court might establish the prohibition to travel abroad by passport retirement.

Annex C: Terms of Reference

1. Judicial issues

1.1. Legal document

1.1.2 Summons

1.1.3 Judgements

1.2. Bribery in the justice system

1.3. Consequences of not following issued judicial orders

1.4. Exit when released on bail or sentenced