

## THE RIGHT TO UNDERSTAND CHARGE OF ACCUSED PERSON IN INVESTIGATION STEP OF CRIMINAL PROCEEDINGS ACCORDING THE CRIMINAL PROCEDURE CODE OF AFGHANISTAN 2014

The right of understand to charge's means; the official declaration of a criminal act by the competent government body against the person who committed that criminal act. According to Code 2014 provided the accused with certain rights including the understand to charge and the response to the criminal phenomenon was left to the governmental entities as a representative of society. In fact, one of the most important responsibilities assigned by the society to the government is to investigate, and prosecute, and if the accused is found guilty and is convicted of the crime, be liable to be punished by the judge in accordance with the law.

Therefore, one of the stages where the need to consider the accused person's right to be charged is the criminal investigation stage, which is clearly one of the basic duties of the judicial police in the crime detection stage, the police officer in the investigation stage, and the judge in the trial stage. Therefore, the main purpose of the research on this matter is actually to examine the right of the defendant to explain the charge in the investigation phase of the criminal proceedings. It should be mentioned that this topic has been written using reliable scientific sources and a review research method.

**Key words:** *Accused, Investigation, Charge, Judicial Police and Code 2014.*

### **The Concept of Investigation**

Due to Afghanistan criminal justice system that is Roman-German unlike common law legal system, investigation of an accused person would involve the judicial authorities. Investigation is a set of actions taken by special judicial authorities to detect a crime, gather evidence and prevent the accused from escaping or hiding, and comment on whether it can be prosecuted or not [8]. The investigation in the criminal field started after the discovery of the crime and will continue until the case is handed over to the competent court [5]. In some countries French, Iraq and Turkey with inquisitorial system, an investigation is a set of actions taken by a forensic investigator, either on the orders of a judicial authority or by investigating judges, as well as other competent judicial authorities, to expedite and prepare evidence, including evidence and reasons. It is useful for the person, according to the principle of innocence, the main purpose of which is to prepare the case, facilitate and expedite the trial in court [12]. It should be said that conducting an investigation in any criminal trial is necessary, which in its general sense is called pre-trial investigation which the judicial recording agency prepares a case for a decision by the court and in its limited sense, an investigation conducted by the prosecutor shall act in accordance with the legal powers delegated to him [3]. It is clear that the purpose of the investigation is to investigate the crime, assign it to a person with sufficient reasons and prepare the case for a decision by a competent court that someone is guilty or not [14].

### **The Concept of the Right to Understand the Charge**

The first right of the accused in the special investigation process is the right to be informed of the charge. Observance of this right is one of the main criteria of a fair trial. Literally, the meaning of "understanding" the charge is different from the meaning of "notifying" or "announcing" the charge. In general, it seems that in the process of notification, something is notified to the addressee by observing the formalities such as giving a copy of the document or writing to be notified, upon receiving the written receipt, and in the notification process, without the need for special formalities.

In understanding, the matter must be explained to the audience. Explaining that in the two processes of communication and announcement, the addressor has the duty to "deliver" the material to the addressee with formalities or without formalities and has no obligation to the addressee; but in the process of comprehension, the address or is not content to convey the message to the audience; rather, it should ensure that the addressee understands what is being addressed, even if it is not limited in terms of the form of understanding. However, in the Afghanistan Penal Code, the words notification and explanation are used; considering the above, it becomes clear that when we talk about "explaining the accusation to the accused", it means that the accused person understands his accusation and understands it [11]. In the presence of the accused person, the judicial authority, through summoning or summoning, is obliged to inform him of the accusation. Therefore, an important part of investigation is "understanding the charge". This means that it is the inalienable right of a person to know which criminal act he has committed [4].

To express the terminology of accusation, various interpretations can be seen in the expression of legal thinkers. According to Dr. Ashuri: "An indictment is a formal declaration of an act or criminal act against an accused by an investigating judge in the language and in a manner that is comprehensible to the accused according to his or her specific situation." In other words; "An indictment is a formal declaration of criminal conduct or conduct to an accused person by an investigator, judicial official or judicial officer in a language and manner that is comprehensible to the accused in accordance with his or her specific situation." [2]. It is also stated: "Understanding the charge means that the accused person is aware of the subject of the crime and all the reasons for it." In any case, the appearance of the title of indictment requires nothing more than the indictment itself; however, in international documents as well as the teachings of criminal law, under the influence of libertarian ideas and in accordance with human rights documents, the understanding of the charge, as the case may be, requires such things as stating the reason, title and subject of the crime, cause and nature of the charge. Thus, the purpose of

the charge is to give the accused sufficient notice or information of the allegation of the offence he had committed [10]. The reading or notifying the accused of the charge and explaining the charge to the accused is an extension of the accused right to be informed of the charge so that he understands what he is being. Reading and explaining the charge are distinct rights though related. Otherwise, how is the accused to plead to the charge?

### **The Right to Understand the Charge in Criminal Procedure Code 2014 and The Judicial Authority's Role**

Informing the charge is one of the indisputable principles of criminal procedure; according to the letter of the International Criminal Court, from article 61 onwards, the issue of "confirmation of the charge" is raised. Paragraph 1 of article 61 of the Statute of the High Court 2018 stipulates in this regard: demand them and form. The said hearing will be held in the presence of the prosecutor and the accused, as well as his lawyer, in accordance with the conditions set forth in paragraph 2 [1]. In paragraph 1 of article 7 of the Afghanistan Code 2014, the first right of the accused in the prosecution process is the right to be informed of the charge attributed to him. Thus, according to article 87 of the Criminal Procedure Code 2014, the police are obliged to process and complete the case of the person in question within 72 hours and submit it to the prosecutor [9].

The need to protect individual rights and freedoms, as well as the existence of the principle of legality of crime and punishment, and especially the principle of innocence, the principle of obtaining evidence by law and the principle of prohibition of arbitrary arrest. These principles require that if there is a complaint against an individual, he should be informed of all aspects of this complaint and the charge and have sufficient grounds and opportunities to defend himself [6]. The judicial authority and the person in charge of the investigation must collect the evidence for and against the accused and provide the ground for the administration of justice between the litigants. The first grounding is to state all the charges to the accused person with its aspects and steps and to make sure that he is aware of it. The accused person, is according to the principle of innocence should have sufficient opportunity to present his defence. Understanding the charge is therefore necessary because, on the one hand, it enables the person to plead not guilty to the charge or charges attributed to him. On the other hand, the investigator is allowed to resort to necessary measures, including the issuance of bond to guarantee his appearance to be interrogated by the judicial police [2].

After informing the accusation and not having sufficient reasons against the accused, issuing a criminal security order has no legal grounds. The validity of the charge inevitably depends on firstly, the act has a criminal character, secondly, there is sufficient evidence to attribute it to the accused person, and thirdly, the accused person must be able to commit a crime. In addition to the description of the charge attributed to the accused, the indictment must contain other components that are provided for in both Afghanistan law and international instruments. In the articles related to informing the charge in criminal law, the components of "subject of charge", "reasons of charge" and in international documents, the components of "reason for arrest", "reason for detention", "nature of charge", "reason of charge" is mentioned. Also, the need to validate the legal investigation and the standards of a fair trial also refers to informing the accused of the right to remain silent and the right to choose a lawyer and to present witnesses, etc. All the above must be done in an understandable way and if necessary, the accent of the accused person or the use of an interpreter [11].

In Afghanistan, the notification is made by the judicial police in such a way that the presence of a lawyer is also foreseen. Judicial police first question the identity and exact details of the accused; after that, he asks the address of the accused person and records it in the presence of the court and warns the accused person that if the truth is hidden and the false address is announced, the summons will be sent to the same place, so be careful of his statements [7].

It is worth mentioning that inquiring about the exact address of the accused person will cause the summons to be served faster and prevent the delay of the investigation. The judicial authority must

explicitly inform the accused of the charge and the reasons given, and then continue the investigation. It is not correct to state the charge of mentioning general legal instances of attributive crime as the judicial authority must explain the alleged crimes separately. It is also necessary to fully present to the accused the evidence such as the testimony of witnesses or the location of the crime scene or the type of equipment discovered so that the accused may explain the principal points in the evidence which tells against him. In explaining the accusation, the questions should be explicit, short, useful, clear, relevant to the subject, and the questions of indoctrination and deception, reluctance and coercion of the accused person are prohibited. If the accused person refuses to give an answer, his refusal should be recorded in an authorized form [3].

The judicial police send the investigation papers (dossier) to the prosecutor without delay. In addition, according to Paragraph 1 of article 61 of the Statute of the High Court 2018 Articles of Association, in the court of notification of the charge, the accused person is executed in the presence of his lawyer. However, in the judicial system of our country, due to the non-discriminatory characteristics and deprivation of the accused person from the effective presence of a lawyer, even how the accused person knows enough about the content of the case is unclear. Due to the lack of sufficient information about the accused and the absence of an effective lawyer in the investigation, it is appropriate for the judges of our country to be especially sensitive when informing the charge, and to using the correct method of accusing, introduce the accused to him so that, he can defend himself by objecting to the accusations or objecting to the evidence cited by the plaintiff and the prosecutor or presenting new evidence. According to the court letter, the prosecutor continues his investigation before the hearing of the charge and can also correct or return the charges, and in case of any correction or extradition, he must inform the accused along with the reasons [1].

The right of the accused to be informed of the charge attributed to him makes him familiar with the nature of the accusation which in turn helps him in preparing his defence to the allegation, getting a lawyer for advice or legal aid, and collecting evidence in his favor. However, if a question is raised in relation to a criminal act by the judicial institutions before informing the accused, he is not obliged to provide an answer in the field though it is not lawful for the judiciary to ask a question, nor for the defendant to provide an answer. The right to be informed is often than not, not explained to the accused by the police, the prosecutor and the judge in the first instance contrary to articles 7 and 8 of the Criminal Procedure Code 2014, This causes the accused to be unaware of the accusation and the content of the case, to be deprived of the use of its other defence rights, to be not obliged to provide answers to the questions raised, and thus, the investigation conducted by the judicial institutions is incomplete, it also undermines justice.

### Conclusion

The Criminal Procedure Code of 2014 has recognized the right of the accused to explain the charge. So that the accused person, having this right, not only becomes aware of his other legal rights, but also stands on an equal footing with the police, prosecutor, and judge in defense of his accusation. This will ensure the government that the defendant was not treated unfairly during the criminal proceedings.

Justice must not only be implemented; but it should be seen whether it is really implemented or not? In spite of the 2014 Code giving this right to the accused, in practice there are still cases where the accused did not have this right in the province where he lived. This situation worsens when the accused himself is not aware of his rights according to the law, and the judicial authorities should not look down on the accused by turning a blind eye to the rights of the accused. By understanding the right to clarify charges, this negative mindset among legal and judicial officers can be gradually reduced.

Therefore, by researching the right of the accused person to explain the charge in the investigation phase of the criminal proceedings, it can be concluded that the 2014 code considers the right to explain the charge as the first right for the accused in order to prepare the ground for the use of his other legal rights.

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## ПРАВО НА ПОНИМАНИЕ ОБВИНЕНИЯ ОБВИНЯЕМОГО ЛИЦА НА СТАДИИ РАССЛЕДОВАНИЯ УГОЛОВНОГО ПРОИЗВОДСТВА В СООТВЕТСТВИИ С УГОЛОВНО-ПРОЦЕССУАЛЬНЫМ КОДЕКСОМ АФГАНИСТАНА 2014 ГОДА

Право на понимание средств предъявления обвинения – официальное заявление компетентного государственного органа о преступном деянии в отношении лица, совершившего это преступное деяние. Согласно Кодексу 2014 год предоставил обвиняемому определенные права, включая право на предъявление обвинения, а реагирование на преступное явление было оставлено на усмотрение государственных структур как представителей общества. На самом деле, одной из наиболее важных обязанностей, возложенных обществом на правительство, является расследование и судебное преследование, и если обвиняемый будет признан виновным и осужден за совершение преступления, судья понесет наказание в соответствии с законом.

Таким образом, одной из стадий, на которой необходимо учитывать право обвиняемого на предъявление обвинения, является стадия уголовного расследования, которая, несомненно, является одной из основных обязанностей судебной полиции на стадии раскрытия преступления, сотрудника полиции на стадии расследования и судьи на стадии судебного разбирательства. Таким образом, основной целью исследования по этому вопросу фактически является изучение права обвиняемого разъяснять обвинение на этапе расследования уголовного производства. Следует отметить, что эта тема была написана с использованием надежных научных источников и обзорного метода исследования.

*Ключевые слова:* обвиняемый, расследование, обвинение, судебная полиция и Кодекс 2014.