

The Right to Attorney in Administrative Proceedings

*Alimohamad Fallahzadeh**

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Abstract

The right to attorney in judicial proceedings is one of the basic procedural rights that serves substantive rights. The question that can be raised here is “What is the meaning and characteristics of the attorney in administrative proceedings? Using a comparative and analytical method, the present article seeks to answer the above question. The findings of this article show that the British and Australian legal systems do not recognize the right to attorney in administrative proceedings as an absolute right. If the laws don't recognize the power of attorney in the administrative proceedings, it will be up to administrative courts. However, in cases where procedural fairness requires this right, the courts are sensitive to it in their judicial procedure. The procedure of the European Court of Human Rights also shows that the concepts of fairness of the proceedings and the right to attorney have been extended to administrative proceedings as well. In the Iranian legal system, the attorney is one of the basic procedural rights recognized by the Constitution and according to the approach of the Guardian Council, this right can be extended to administrative courts as well. The judicial procedure of the Court of Administrative Justice also confirms this approach and treats it as a judicial proceeding.

Keywords: Attorney; Administrative Proceeding; European Court of Human Rights; the Court of Administrative Justice.

* Assistance Professor of Public Law, Allameh Tabatabaiee University, Tehran, Iran.
Email: amfallahzadeh2002@gmail.com



1- Introduction

Proceedings at administrative courts and tribunals are sometimes complicated and the rules and regulations governing the issue may be technically complex; so much so that citizens may not be able to defend their rights properly. Nowadays, administrative decisions and proceedings encompass a wide spectrum of issues and may affect citizens' rights, freedoms and interests. Therefore, most legal systems predict procedural guarantees to protect individuals, which are referred to as "procedural rights". One such right is the right to attorney. In judicial proceedings, the right to attorney is one of the basic, recognized rights, yet an issue that may be raised is whether the right to attorney is also considered as one of the basic rights of citizens in administrative proceedings, whether fair trial in administrative proceedings requires the right to attorney, and whether the rationale behind the right to attorney in judicial proceedings also justifies the recognition of this right in administrative proceedings. Some argue that protection of defense rights is necessary in all judicial and administrative authorities¹ or the complexity of some of the cases in special administrative courts highlights the necessity of the right to attorney.² On the other hand, it could be argued that administrative proceedings are different from judicial proceedings and one of the reasons for recognizing special administrative courts and authorities is to eliminate unnecessary formalities and ensure prompt proceedings, and if the right to attorney is to be recognized absolutely throughout all the phases of administrative proceedings, then it will be contradictory to its philosophy. On the contrary, it could be argued that if the issue before the tribunals and administrative courts is related to the important rights and interests of citizens, fair treatment of individuals will require that they be able to have at their disposal the necessary and sufficient means to defend their rights and interests. One of the most important of these means, which is considered among the procedural rights, is the right to attorney and in this respect, it is no different from judicial proceedings; thus, the right to attorney cannot be left entirely to the discretion of the administrative tribunals, but rather, in these instances, the right to attorney must be acknowledged by the legislature.

In the case of Europe, the applicability of Article 6 (1) of the European Convention on Human Rights and Fundamental Freedoms, which requires the

1. Abdullah Shams, "The Principle of Correspondence", *Legal Research* 5, no. 35-36 (November 2002): 68.

2. Mehdi Hadavand and Farhad Jam, *The Legal System of Addressing the Disputes of the Contractors with the Social Welfare Organization* (Tehran: Jangal Publication, 2011), 173.

determination of a person's civil rights by an independent and impartial tribunal, also seems to be an important issue in administrative proceedings, which the European Court of Human Rights has adopted an active approach to it. However, first, it is often unclear when an administrative decision determines citizenship rights, and second, because a violation of the law can be remedied when the afflicted person has access to a court that has full jurisdiction to hear the case, it is often unclear what the full jurisdiction is in these circumstances.

The present article seeks to examine the approach of some of the legal systems as well as the European Court of Human Rights in this regard and finally study the Iranian legal system with an emphasis on the judicial procedure of the Court of Administrative Justice as well as the approach of the Guardian Council to Article 35 of the Constitution, and highlight its potential defects and shortcomings. In fact, the aim of this comparative study is to identify the approach of the legal systems under study to the use of the power of attorney in administrative proceedings. The reason for choosing the legal systems of the UK and Australia is because these two legal systems have adopted a flexible and moderate approach to the right to attorney in administrative proceedings and its efficiency, which is based on the fairness of the proceedings.³ In this article, first, the right to attorney in administrative proceedings in Australia is examined and then the same issue is investigated in the UK and finally, the issue is studied in the Iranian legal system with an emphasis on the view of the Guardian Council and the procedure of the Court of Administrative Justice.

2- The Right to Attorney in the Administrative Proceedings in the Procedure of the European Court of Human Rights

The right to attorney is a type of right that can be considered irrevocable, just like the right to life. These rights are “hard” rights,⁴ because they have a status that the rights in Articles 8 to 11 of the European Convention on Human Rights lack. In general, the range of the lawsuits under the European Convention indicates that the majority of lawsuits are of a civil or criminal nature. Nevertheless, some of these lawsuits overlap with administrative lawsuits, in a way that administrative lawsuits in administrative courts and administrative

3. Matthew Groves and H. P. Lee, *Australian Administrative Law: Fundamentals, Principles, and Doctrines* (New York: Cambridge University Press, 2007), 124.

4. Andrew Ashworth, *Eroding the structure of the European convention* (Oxford: Hart publishing, 2013), 33.

decisions include specific civil rights and duties. The procedure of the European Court of Human Rights indicates that a fair hearing does not mean that a person must necessarily be present before administrative officials, but rather his presence becomes necessary when a personal element or his lifestyle is related to the issue.⁵

The European Court of Human Rights considers the administrative proceedings, in which civil rights or criminal charges are determined, as an interconnected whole⁶, therefore none of the proceedings have to be fully in accordance with Article 6 (1); provided that the right to reconsider and protest in an independent and impartial court is recognized. In fact, violation of Article 6 (1) in administrative proceedings will be compensated with the possibility of recourse to judicial appeal.⁷ However, this institution which has the power of appeal must have full authority to review the disputed rights. This condition is explicitly applied to courts that have jurisdiction over administrative decisions.⁸

In other words, according to the conditions of each case, the entire proceedings should be fair. Accordingly, the right to attorney in administrative proceedings is necessary if the subject of proceedings has the right to proceedings and oral hearing and the entire circumstances of the case indicate that proceedings cannot be fair without the presence of an attorney.⁹ For instance, in a case in which the research program of an institute of social sciences was not accepted by the Ministry of Science and the objection of this institute was rejected in the administrative court, it was claimed that the administrative court rejected the plan without an oral hearing and without any reason and the Constitutional Court did not consider the matter to be of sufficient importance to be within its jurisdiction, and finally the European Court of Human Rights declared that all the 6 articles of the European Convention on Human Rights, but one, had been violated in that the whole process was not fair.¹⁰

5. Paul Craig, *Administrative law* (Edinburgh: Sweet & Maxwell, 2008), 446.

6. Christopher Forsyth, "Procedural Justice in Administrative Proceedings and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms", *the Cambridge Law Journal* 62, no. 2 (August 2003): 244.

7. Craig, *Administrative law*, 446.

8. *Austria. vs. Fisher*, 1995.

9. D. J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures* (Oxford: Clarendon Press, 1996), 446.

10. "Mirovni Institut v. Slovenia", Last Accessed November 27, 2022. <https://laweuro.com/?p=8860>.

3- The Right to Attorney in Administrative Proceedings in Australia

In Australian law, the right to attorney is one of the fundamental rights of citizens, which is protected by judicial procedure with high sensitivity. However, this right becomes more crucial in administrative proceedings.

3-1- The Concept of Attorney in Administrative Proceedings

In the Australian administrative law, when the right to obtain an attorney is mentioned, it means that if in the abovementioned law this right is recognized, then individuals can enjoy it,¹¹ but if no such stipulation is made and fairness requires the presence of an attorney, this right will be preserved for the beneficiaries. According to Section 32 of the Law on Administrative Courts of Appeal, regarding the proceedings related to social services and supports for children, citizens can file and pursue a lawsuit themselves or use a lawyer if the court allows it. And if the administrative tribunal does not allow it, then procedural fairness will be violated and this is considered a violation of the verdict or decision of the administrative authority. In this case, any decision and verdict of the administrative tribunals regarding the denial of the right to attorney can be appealed. Therefore, the decisions of administrative tribunals may be reversed by the administrative appeal court because they had to allow the power of attorney, but they failed to do so. For instance, in the Li Shi Ping case, although there was not an express stipulation in the law regarding the right to attorney in administrative tribunals, given the circumstances of the case, the court found that not allowing the power of attorney violated natural justice. However, procedural fairness (natural justice) does not include the right to attorney before all administrative bodies and tribunals in all cases because procedural fairness is a flexible concept that depends on factors such as the circumstances and conditions of each case, including the nature of the proceedings and the backgrounds of the parties to a lawsuit before the administrative tribunals.¹² Therefore, if in the Australian law, the right to attorney is explicitly or implicitly excluded, then this right will not be recognized in administrative proceedings,¹³ but if this right is not excluded in the law passed by the parliament, then either of the following will be the case: either the constitutional law passed by the parliament explicitly or implicitly recognizes the right to attorney, in which case this right exists and is applied

11. "State of South Australia v. Slipper", Last Accessed November 27, 2022, <https://jade.io/article/108053>

12. Paul Latimer, Michael Hocken and Stephen Marsden, "Legal Representation in Australia before Tribunals, Committees and other Bodies", *Murdoch University Law Journal* 14, no. 2 (2007): 124.

13. Groves and Lee, *Australian administrative law*, 272.

in that particular case, or if this right is not expressly recognized, then the question that will be raised is if the constitutional law of the administrative body or tribunal explicitly or implicitly grants the same administrative tribunal or body the authority to decide whether or not to recognize the right to attorney.¹⁴ If this authority is not granted, then the administrative tribunal or body itself will decide on this issue, and the right to attorney exists in cases where procedural fairness requires it and if this authority is granted to the administrative body or tribunal itself to decide on the issue, then the decision of the administrative tribunal or bod regarding the recognition of the power of attorney is judicially irrevocable.¹⁵

3-2- The Right to an Oral Hearing and the Right to Attorney

Another important issue regarding attorney is whether the right to an oral hearing before administrative courts automatically entails the right to attorney. The right to have an attorney before administrative authorities may be recognized merely in cases where the individual has the right to an oral heard and proceeding before administrative authorities. In Australian law, if the right to an oral hearing is recognized in the constitutional law of an administrative body or tribunal, this right will also include the right to attorney. The High Court of Australia has also confirmed this view.¹⁶ Anyway, if the constitutional law of an administrative tribunal recognizes the right to an oral hearing, then the right to attorney in administrative proceedings will also exist. In another case regarding the performance of a police officer, it was confirmed that because the performance of the police officer in the case had been of a quasi-judicial, and not merely administrative, nature, the principles of natural justice require the right to attorney.¹⁷

3-3- The Limitations of the Right to Attorney

Even in cases where the right to attorney has been expressly recognized in the law, according to the law passed by the parliament, the administrative body or tribunal or the administrative inspector have the authority to prohibit a particular attorney from participating in the proceedings and inspection process due to legitimate legal reasons. In other words, natural justice in Australia does not mean the right to attorney before all administrative tribunals. However, two main

14. "Re Refugee Review Tribunal; Ex parte Aala", Last Accessed November 27, 2022, <https://jade.io/article/68226>

15. Latimer, Hocken and Marsden, "Legal Representation in Australia before Tribunals", 125.

16. "R V. Board of Appeal Ex parte Kay", Last Accessed November 27, 2022, <https://jade.io/article/62570>

17. "R V. commissioner of police of North En terry ex parte Edwards", Last Accessed May 31, 2022, http://www.eccourts.org/wp-content/files_mf/19.07.99adolphedwardsetalvcommissionerofpolice.pdf

reasons may cause the parliament to restrict attorney in administrative proceedings: practical considerations and economic issues. For instance, Section 76 of the Commercial Courts and Consumer Rights Act prohibits the presence of an attorney under certain circumstances. Besides, an attorney may have a personal interest in the results of the proceedings or face a conflict of interests.¹⁸ In some cases, by passing a law, the parliament may explicitly aim to grant an administrative body or tribunal the authority to develop and implement its own procedure. In this case, the decision of that body or tribunal regarding the permission or prohibition of attorney before that body or tribunal is not amenable to judicial review. Yet, the important point is that the intention of the parliament must be quite clear because merely permitting an administrative tribunal or body to develop and implement its own procedure does not eliminate the necessity of compliance of the proceedings with procedural fairness.¹⁹

4- The Right to Attorney in Administrative Proceedings in the UK

Although the right to attorney in administrative proceedings in the UK is not absolute or similar to the right to attorney in judicial proceedings, the concept of fairness has led to the recognition of the right to attorney in cases where it is required in administrative proceedings.

4-1- The Concept of Attorney in Administrative Proceedings

In the UK, there is no absolute right to attorney in administrative proceedings; the decision regarding the possibility of granting this right in the absence of legal regulation, considering the conditions governing each case, is made by administrative bodies. The principle in British law is that attorney is not the necessary condition for procedural fairness. Administrative bodies and tribunals are required to follow fair procedures in exercising their competencies, but whether or not the attorney is necessary for fair treatment depends on the specific conditions of each case *Ederdy Town f. c. v. football Association* (1920), *R V. Home secretary, ex parte Tarrant* (1985), *R. V Board of visitor, ex parte hone*.²⁰

In other words, the right to attorney before administrative tribunals is not an absolute principle and administrative tribunal can accept or reject it based on the case content and subject.²¹ The parliament usually passes regulations on the attorney in each of the areas. At the moment, in cases where the right to a

18. Latimer, Hocken and Marsden, "Legal Representation in Australia before Tribunals", 133.

19. Latimer, Hocken and Marsden, "Legal Representation in Australia before Tribunals", 134.

20. Galligan, *Due Process and Fair Procedures*, 366-367.

21. Thio Li-Ann, *Law and the Administrative State* (Singapore: Singapore University Press, 1999), 160.

hearing before administrative tribunals is recognized or the proceeding has a judicial or quasi-judicial nature, it usually includes the right to attorney. If applicable laws are silent in this regard, the general principle is that it is up to the administrative tribunals and bodies to decide whether or not to recognize the right to attorney.²² However, the duty to act fairly and fairness of the entire procedure has led the court to consider the absence of such a permit in some cases as a violation of the principles of procedural justice.²³

In some cases, the right to attorney has been well-established. For instance, in cases where a person is dismissed from his job or an administrative decision causes him to lose his livelihood, courts authorize attorney.²⁴ In the Tarrant, Lord Webster case, several factors affected the authorization of attorney: 1- The significance of the issue or administrative penalty and its execution guarantee; 2- A person's ability to defend himself; and 3- Whether or not the issue being investigated by the administrative tribunal is related to the livelihood and reputation of individuals.²⁵ Also, administrative courts have no obligation to provide legal aid to individuals when they cannot file a case and defend themselves without an attorney.

4-2- Limitations of the Right to an Attorney

The attorney may be useless and unnecessary or extremely cumbersome in cases and issues that need to be investigated and resolved quickly. Therefore, in such cases, courts resist recognizing the right to attorney.²⁶ The analysis of the House of Lords in the Hun case as to whether a prisoner can properly represent and defend himself is remarkable; the House of Lords announced that refusing to recognize the right to attorney in the early stages of administrative proceedings can hardly be considered as violating the principles of procedural fairness.²⁷ Also, the procedure of courts indicates that the element of efficiency of administrative decisions has been considered and the utilitarian approach has been the basis in some cases.²⁸

22. Galligan, *Due Process and Fair Procedures*, 368.

23. "Boxus and others v. Région wallone", Last Accessed November 27, 2022, <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A62009CJ0128>

24. D. J. Brynard, "The Duty to Act Fairly: a Flexible Approach to Procedural Fairness in Public Administration", *Administration Publica* 18, no. 4 (2010): 130.

25. "R v. Secretary of state for home department, ex parte Tarrant", Last Accessed November 27, 2022, <https://swarb.co.uk/regina-v-home-secretary-ex-parte-tarrant-and-others-1985/>

26. Craig, *Administrative law*, 433.

27. Galligan, *Due Process and Fair Procedures*, 369.

28. "Osborn v. The Parole Board", Last Accessed November 27, 2022, <https://www.supremecourt.uk/cases/docs/uksc-2011-0147-judgment.pdf>

5- Legal Assistance and Human Rights Obligations of Governments

When people lack the minimum and necessary facilities, the right to justice requires the proper legal assistance as well. In any case, the costs of proceedings should not prevent individuals from being able to file a complaint easily and realistically.²⁹ The concept of legal assistance in administrative law refers to the provision of free legal consultation or representation of individuals before administrative courts and tribunals and covering all or part of the costs of proceedings and complaints. In this regard, the Human Rights Committee has acknowledged that the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.³⁰ Internationally, governments have no absolute obligation to provide legal aid for all disputes; it can even be claimed that regional documents in this regard do not provide absolute obligations either.³¹ The following factors are crucial to the question of how much legal assistance is necessary to ensure a fair trial:

1- The legal characteristics and nature of the case, 2- The significance of the subject of the complaint to the plaintiff, 3- The complexity of the laws governing the issue, 4- The extent to which the plaintiff can effectively bring a lawsuit and defend himself and the extent to which he really needs legal assistance. In this regard, the Council of Europe also states that necessary legal aid in court proceedings should be provided for those who cannot afford the costs to ensure that no one would be prevented by economic obstacles from pursuing or defending his right before administrative tribunals and courts.³² In any case, the extent of legal assistance is determined based on the nature of the rights or interests at dispute. If in some systems legal assistance is provided by the private or non-governmental sector, such as bar associations or civil institutions, the government will still be responsible for the efficiency and efficacy of the legal assistance.³³ Legal assistance may include legal

29. *Handbook for monitoring administrative justice*, (Warsaw: OSCE Publishing, 2013), 56.

30. "Right to equality before courts and tribunals and to fair trial", UN Human Rights Committee, General comment no. 32.

31. "Bertuzzi v. France", Last Accessed November 27, 2022. <https://jurinfo.jep.gov.co/normograma/compilacion/docs/pdf/CASE%20OF%20BERTUZZI%20v.%20FRANCE.PDF>

32. Resolution 78(8) on legal aid and advice, Council of Europe, Last Accessed November 27, 2022, <https://rm.coe.int/cmres-78-8-on-legal-aid-and-advice/1680a43b71>

33. "Van der Mussele v. Belgium", Last Accessed November 27, 2022, https://compendium.itcilo.org/en/compendium-decisions/european-court-of-human-rights-van-der-mussele-v-belgium-application-no-8919-80-23-november-1983-series-a-no-70/at_download/attachedfile

representation or simply legal consultation and payment of the costs. In some legal systems, all the costs paid by a person in an administrative dispute, such as lawyer's fee or expert's fee or the costs related to the witnesses and translation, etc. are covered.³⁴

6- The Right to Attorney in Administrative Proceedings in Iran

6-1- Article 35 of the Constitution and the Procedure of the Guardian Council

According to Article 35 of the Constitution of the Islamic Republic of Iran, in all courts, the opposing parties to a dispute have the right to choose an attorney for themselves. Apparently, this law is specific to courts of justice, but the view of the Guardian Council of the Constitution indicates that according to this council, the right to choose an attorney stipulated in Article 35 of the Constitution is not limited to the courts of justice. In response to an inquiry from the head of the Islamic Consultative Assembly Commission of Article 90 of the Constitution regarding the scope of Article 35 of the Constitution in terms of disciplinary courts of registrars and other quasi-judicial authorities, the Council stated: "Since Article 35 of the Constitution does not deny the right to choose an attorney in settings other than the court, the article does not need to be interpreted."³⁵ Some argue that according to the Guardian Council, the right to choose an attorney is applicable and includes all judicial and quasi-judicial authorities, and obviously the article does not need to be interpreted.³⁶ In a broad interpretation of the term 'court', the article can also include administrative authorities.³⁷ In cases where the law is silent in regard to the right to attorney in administrative proceedings, according to Article 35 of the Constitution, this right is one of the obvious rights and the presence of an attorney in the hearings cannot be prevented under the pretext that it is not recognized by the Constitution.³⁸ On the other hand, according to the view of the Guardian Council, it could be argued that this article does not deny the right to attorney in administrative courts, however, the view implies that the right to attorney before courts of justice has a basic description but the right to attorney in administrative courts and authorities does not have a basic description and although the Constitution

34. *Handbook for monitoring administrative justice*, 56.

35. View No. 6617-19/4/1373.

36. Vali Rostami, Moslem Aghaei and Hassan Lotfi, *Fair Proceeding in Special Administrative Authorities in Iran* (Tehran: The University of Tehran, 2009), 124.

37. Saeed Khani Valizadeh, "The Right to Attorney in Administrative Proceedings in Iran and France", *the Journal of Administrative Law* 6, no.17 (December, 2018): 192.

38. Mohammad Emami and Kourosh Ostovarsangari, *Administrative Law* (Tehran: Mizan, 2016), 280.

has not expressly recognized it, it does not deny it either. The implication of this view is that the right to attorney in administrative proceedings would be within the realm of discretion of the ordinary legislator. In other words, it could be argued that the approach of the Guardian Council to the right to attorney in administrative proceedings is to recognize this right, yet it should be noted that this right does not have a basic description and basic description refers only to the right to attorney in judicial proceedings.

6-2- The Judicial Procedure of the Court of Administrative Justice

In executive laws and regulations, the right to attorney in administrative proceedings is sporadically recognized. For example, Article 58 of the Charter of Citizenship Rights approved in 2016 emphasizes the right to attorney in all stages of administrative and disciplinary proceedings. Article 12 of the resolution of the Supreme Administrative Council on citizenship rights in the administrative system also recognizes the same right. Article 62 of the Law for the Implementation of the General Policies of Article 44, also recognizes the right to attorney before the Competition Council, which in some cases conducts administrative proceedings. Article 7 of the Tax Instruction approved in 2008 has also explained and established rules and regulations regarding the right to attorney before the tax authorities. In the following, I will explain how the judicial procedure of the Court of Administrative Justice has tried to eliminate the gap and shortcomings regarding the absence of a general law on the right to attorney in all administrative proceedings. The judicial procedure of the Court of Administrative Justice shows that the right to attorney is not limited to judicial proceedings and can also be applied to administrative proceedings and decisions.

In one case, the Court considered the Iranian customs directives on not accepting to represent retired customs employees in the dual commissions for settling customs disputes and appeals to be in violation of the provisions of the civil code regarding representation in terms of its restrictions as well as the provisions contained in it.³⁹ Also, in another dispute against the Iranian Traffic Department, the Court annulled the directive of the mentioned department on the prohibition of the power of attorney to obtain a duplicate card or a duplicate automobile booklet, although eventually regarding the case of the plaintiff, due to the failure to submit the directive and its denial

39. Verdict of the unity of procedure 90/66-100 February 12, 1990 regarding the annulation of the directive No. 55-199/102/10447 dated September 9, 1987 of the Iranian Customs concerning the right to attorney.

by the defendant, the lawsuit was rejected; however, the context of the lawsuit and its statements indicate that this prohibition is not justified according to the Court of Administrative Justice.⁴⁰ The judicial procedure of the Court of Administrative Justice, even beyond mere recognition of the right to attorney, extends the role of attorney in civil proceedings to administrative proceedings as well.

For instance, Branch 9 of the Court of Administrative Justice rejected the verdict of the Registration Supervisory Board of Tehran Province and justified its decision as follows: "...while according to the available documentation and evidence, the debtor has had an attorney to pursue the executive operation, as a rule, and based on the principles of procedural law, the attorney had to be notified of all the measures and documents, and delivering the written notice of the assessment of the property to the debtor's address is problematic.⁴¹ In other words, people not only have the right to attorney in administrative proceedings, but also the principles governing notification in administrative proceedings are the same as those in civil proceedings, and the attorney had to be notified of the assessment of the property, which is an administrative process. Such a formalist approach to the process of administrative decision-making and proceedings is not consistent with the logic and nature of administrative processes which require flexibility and speed in decision-making; in fact, it could be argued that in cases where people's rights might be violated, the rules of administrative proceeding must approach those of judicial proceeding and the proceedings should be fair. However, the full compliance of these rules with the rules of judicial proceedings in all cases is not in line with the objectives and philosophy of de-judicialization and the establishment of administrative institutions. Nevertheless, although in some cases, some of the regulations regarding the administrative procedural law contain rules concerning the right to attorney, failing to legislate and pass an administrative procedural law to encompass all these issues has led to a legal vacuum, in a way that now there is no general law regarding the possibility or impossibility of having an attorney in administrative proceedings and its terms and conditions. The procedure of the Court of Administrative Justice also treats the issue of attorney in administrative proceedings the same as attorney in judicial proceedings.

40. Judgment No.431/83-103 dated May 29, 2005.

41. Judgment No. 909970900702220, dated August 31, 2020, Branch 9.

7- Conclusion

The right to attorney in administrative proceedings can be interpreted under the title of “fair proceeding”. Fair proceeding contains the concept that the entire process of administrative proceeding must be based on fair treatment of the person subject to proceeding. In judicial proceedings, the right to attorney is one of the basic, inalienable and inevitable elements of the fair proceeding; however, fair proceeding in the administrative sector, due to its nature which is different from judicial proceedings, is more flexible and depends on various factors such as the nature of the administrative proceeding, the issue and its significance and complexity and the extent to which the person can defend himself, the importance of the rights and interests in relation to the person and the economic costs. For instance, two of the legal systems, that is, the British and Australian legal systems have adopted the same approach to the right to attorney in administrative proceedings; to the extent that having an attorney in administrative proceedings is not an absolute right and is different from judicial proceedings. If the laws passed by the parliament do not recognize the power of attorney, it will be up to administrative tribunals; nevertheless, the judicial procedure of the courts deal with this issue with sensitivity where procedural fairness requires this right; in other words, the concepts of fair proceeding and procedural fairness have been considered in courts and even in some cases where the right to attorney in administrative proceedings is restricted, the entire administrative proceedings has to be fair. In the Iranian legal system, the approach of the Guardian Council to Article 35 of the Constitution that has not denied the right to attorney in non-judicial authorities is based on the recognition of this right in administrative proceedings; however, the right to attorney in judicial proceedings has a basic description or Constitutional value, but the right to attorney in administrative proceedings would be within the realm of discretion of the ordinary legislator. The judicial procedure of the Court of Administrative Justice regarding the right to attorney in administrative proceedings and processes is similar to judicial proceedings and has the same effects and representation rules as civil proceedings; an approach that is different from the legal systems under study. In theory, it could be stated that the procedure of the Court of Administrative Justice regarding the right to attorney in administrative proceedings should be different from that of judicial proceedings and given the difference between these two, it should be more

flexible; but in practice, since in the Iranian legal system administrative proceedings lack a clear and fair procedural law and practically these authorities pay little attention to the principles of fair proceeding, the approach of the Court of Administrative Justice regarding the right to attorney in administrative proceedings is admirable; because the outcome of such an approach is the fairness of administrative proceedings and protection of people's rights and interests in the process of the administrative proceeding.



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