
The privacy of the accused's right to defense between legislative drafting and protected interest: Analytical and comparative study

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Abstract

The right of defense is one of the most elementary ones for all that has a problem in judiciary and is viewed as part of the natural rights which are inextricably connected to numerous constitutional laws forever. The end it prioritizes is justice. To enjoy this right, there are subjective and objective requirements which should exist so that it will be possible for an individual effectively to exercise his right. Right to defense is closely related to several constitutional rights and its fundamental aim is to bring justice to life; to be able to use this right several personal and substantive conditions should be met.

The right of defense is subject to personal and objective conditions which are necessary but not sufficient for an accused person to be able to make it actual exercise. This right carries with it the power to defend himself personally from charges against him and that he is the best equipped person to refute charges directed at him.

Accordingly, competent authorities have a duty to alert the accused specifically to the charges against him, to afford him full access to the case file and to secure his presence at trial, thus offering him the opportunity to adequately defend himself against all charges.

Keywords: Human Rights, right of defense, drafting legislation, Fair trial, Criminal Responsibility.

1. Introduction

There is no doubt that the accused's right to defense is one of the basic human rights and is closely linked to the judicial dispute. This right is considered a natural privilege recognized by the accused, due to its connection to the supreme principles on which justice is based. The right to defense is universally recognized in all legislations, except in situations where oppressive regimes undermine this fundamental right. The accused's right to defense is also linked to the idea of justice itself, as justice cannot be achieved without guaranteeing the right to defense, and any restriction on the exercise of this right is considered a deviation from the path of justice, because the right to defense represents the social means to confront injustice and aggression. Hence, this research will be divided to identify the most important of these guarantees in the accused's right to defense into the following: The concept of the accused's right to defense, and the images and manifestations of the accused's right to defense.

A. Problem Statement

However, the general problem in this topic is represented that a key concern arises regarding the adequacy of legislative provisions in effectively safeguarding this right. Do current legal texts provide sufficient guarantees, or do they contain ambiguities that could undermine the accused's ability to defend themselves? There is also a debate about whether these laws have the appropriate balance between, on the one hand, protecting individual rights and, on the other, advancing some broader interest in the prosecution and the enforcement of the laws. A further core question is whether current structures are consistent with international standards on human rights and provide effective tools. It is important to address these issues to consider whether draft legislation provides adequate protection for accused people, or if legal changes are necessary to improve fairness and justice in criminal trials.

B. Research Questions

1. Was the Omani legislator successful in regulating the right to defense in local penal legislation in a manner that is consistent with what is stated in international treaties and the constitutional law of the Sultanate?
2. What legal mechanisms has Omani legislation adopted to balance the right to defense with the state's right to punish perpetrators of crimes?
3. Are the guarantees related to the accused's right to defense available in Omani criminal legislation, specifically the Code of Criminal Procedure, sufficient to ensure the accused receives a fair trial?
4. How do current legislative frameworks compare to international human rights standards in ensuring a fair trial and adequate defense?

C. Objectives of the Study

This study aims to explore whether the current legal framework effectively protects the accused's right to defense and whether there are areas that need improvement. Specifically, it seeks to:

1. Understand the most important fundamental principles underlying the right to defense.
2. Identify the most important guarantees that guarantee the accused the right to defend himself during the trial phase of a criminal case in Omani criminal law and the mechanisms for protecting them.
3. Explain the effectiveness of the right to defense in Omani criminal law compared to other domestic legal systems.
4. Explain the penalty for breaching or violating the right to defense enjoyed by the accused under Omani law.

By addressing these objectives, this study will contribute to a clearer understanding of whether legislative drafting is truly safeguarding the accused's right to defense or if changes are needed to ensure justice is upheld.

D. Significance of Study

This study is valuable when it comes to examining and understanding specific local procedural legal rules in the Sultanate and comparing them with the Egyptian law, and to measure the compatibility of the accused's right to defense with the human rights environment, as illustrated by European Court of Human Rights decisions. This paper aims to discussing the difficulties of the Omani law in this regard and the proposed solutions to overcome them and to ensure the right of defense to the accused and the realization of justice in the criminal trial.

2. Definition of the Right to Defense

A. Definition of the Right to Defense:

Certainly, the defendant's right to defend is considered as one of the inherent human rights, which are closely associated with judicial litigations. It's seen as a self-evident right to be accorded the accused because it belongs to these principles that justice is built upon. The right to defend itself is recognized in all the judicial systems of the world as an acquired right unless tyranny supersedes it. Moreover, the right of the accused to defense is intrinsically linked to the concept of justice. One cannot realize justice without ensuring this right. Any restriction of the right of defense is a diversion from the right course of justice; for such a restriction is a right entrusted to society, to avert evil by the infliction of evil.

The right to defense is considered a fundamental cornerstone for achieving justice in criminal proceedings. It represents the highest level of guarantee afforded to the accused during the trial stage (Awad, 1987). Scholars have debated whether the right to defense is "right" or "freedom." A "right" involves an obligation placed on others to act for the benefit of a person, creating a binding legal relationship between two parties, whereas a "freedom" refers to actions an individual may undertake without committing wrongdoing or imposing any obligation on others to assist (Hassan, 1970).

B. Importance of the Right to Defense:

Furthermore, definitions of the right to defense vary among criminal law scholars. Some have defined it as: "enabling an individual to refute charges against them, either by disproving the opposing party's evidence or by presenting evidence of their innocence"(Murad, 1989). It can also be understood as allowing the accused to present their version of the alleged events before their competent judge, whether they deny or admit to the charges (Al-Marsafawi, 1973). Thus, the importance of the right to defense emerges through empowering the accused to rebut and challenge accusations. Additionally, the right to defense helps the judge uncover the truth in criminal cases through the defense presented by the accused or their lawyer (Bashit, 1979). Conversely, the absence of this right can distort reality, allow false testimonies or illegally obtain confessions to mislead the judiciary, obscure the truth, and ultimately lead to serious judicial errors (Al-Marsafawi, 1973). Similarly, Article (6/3) of the European Convention on Human Rights (1950) states that: "Everyone charged with a criminal offence has the following minimum rights: ... (c) to defend himself in person or through legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

The constitutional significance of this right is well established in international and regional conventions; however, these conventions and laws have not provided a precise definition for the accused's right to defense because of the evolving nature of this concept. Therefore, it is challenging to formulate a universally accepted definition. Because the right to defense, human rights, and natural rights are abstract concepts, they are translated by positive law into specific guarantees granted to individuals who participate in criminal proceedings (Al-Mukhtar, 1981).

3. Manifestations of the Right to Defense in Criminal Procedure Law

Just as the prosecution possesses strong procedural measures, such as the authority to arrest or detain suspects, the defense similarly has effective means to counter the evidence presented against the accused. The accused holds the right to challenge such evidence through exculpatory proof (Mustafa, 2009). Consequently, it becomes essential to ensure equality, as far as possible, between prosecution and defense in terms of procedural rights. This equality requires granting sufficient procedural means to refute the prosecution's evidence and enabling them to present evidence that establishes the accused's innocence (Farhan, 2018).

A. The Right to a Prompt and Fair Trial:

The right to a prompt and fair trial is one of the essential guarantees that must be secured to protect the rights of the accused. Delays in these proceedings may cause multiple damages to the accused, whether materially, psychologically, or socially (Farhan, 2018). Hence, the right of the accused to a speedy trial and the timely resolution of cases involving their freedom is considered a fundamental right, provided that such speed does not contradict the basic principles of a fair trial, including, for instance, the principles of publicity, orality, and the presence of parties. Therefore, the necessity emerges clearly to conclude criminal proceedings concerning the accused within the shortest possible period.

The concept of a speedy trial should be distinguished from a hasty trial. The latter neglects fundamental safeguards that guarantee the accused's right to defense, as in some cases, such trials are conducted without adherence to regular judicial procedures or prescribed means of appeal, thus violating the legal safeguards established to protect the accused's rights (Al-Ajili, 2012).

Determining the reasonableness of the time within which a case must be decided largely depends on the circumstances of each case individually. This is fundamentally a factual issue, as the judge must assess the elements and nature of

the case to identify an appropriate period for resolution> This evaluation aims at striking a balance between the public interest and the private interest of the accused (Constitutional Court of Egypt, 1997).

According to Article (5/3) of the European Convention on Human Rights (1950) stipulates: "Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

A speedy trial means conducting procedures within a reasonable time frame (Ghannam, 1992) that cover all actions undertaken by the competent authorities from the moment the accused is charged until the issuance of the final judgment, whether the verdict results in conviction or acquittal (Qourari, 2006).

This principle has been affirmed by the Supreme Court of Oman, stating: "Prompt justice is the goal and purpose of judicial rulings, as judgments hold no value unless they are rendered promptly. A judgment is prompt only if it is clear, unambiguous, and free from uncertainty or confusion" (Supreme Court of Oman Criminal Chamber, 2006).

B. The Right to Confrontation:

The accused has the right to be fully informed of all matters related to the charge brought against him. Without such knowledge, his right to defense would be ambiguous and ineffective (Al-Qadi, 2008). The right to confrontation means explicitly notifying the accused of the type and nature of the charge upon which he is being tried and confronting him with the evidence presented against him. This enables him to adequately prepare his defense, contest the evidence, and refute the charge (Abu Shoqa, 2002).

It is imperative that the court begins proceedings by confronting the accused with the charge and reading it aloud either from the referral order or the summons. Furthermore, the right to confrontation necessitates informing the accused whenever any amendment is made to the charges and providing him with adequate opportunity to prepare his defense following such modification (Al-Qadi, 2008).

The right to confrontation has been explicitly stipulated in international declarations, conventions, and covenants as an essential guarantee for the accused. For instance, Article 14(3)(a) of the International Covenant on Civil and Political Rights states: "In the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the following minimum guarantees: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him." Similarly, Article 6(3)(a) of the European Convention on Human Rights states: "Everyone charged with a criminal offense has the right: (a) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him...". Likewise, Article 14(3) of the Arab Charter on Human Rights provides: "Every person arrested shall be informed of the reasons for his arrest... and shall be promptly informed of the charge or charges against him."

In a similar context, Article 114 of the Omani Criminal Procedure Law stipulates: "Upon the first appearance of the accused before the Public Prosecutor, the prosecutor must verify his identity, record all identity details, inform him of the charge brought against him, and document his statements."

It is essential to emphasize that informing the accused of the charge against him is one of the most critical procedural prerequisites for exercising his right to defense. Knowledge of the charges constitutes a means enabling the accused to structure his defense and statements in the manner he deems most appropriate. Consequently, the accused's right to confrontation includes the right to access case files during the preliminary investigation stage, thus allowing him to become aware of all evidence

against him, based upon which he has been referred to court. Equipped with this knowledge, he can formulate an optimal defense strategy (Al-Qadi, 2008).

In summary, the right of the accused to confrontation concerning the charge against him and his right to access the case file are fundamental prerequisites for exercising his right to defense. Such knowledge enables him to respond effectively to the accusation and conduct his defense promptly. This objective cannot be fully achieved unless the accused exercises his right to attend trial proceedings, which allows him comprehensive knowledge of all aspects of the case before the court. Both Omani and Egyptian judiciary have concurred that any violation of this safeguard invalidates the proceedings, and consequently invalidates any judgment rendered against the accused, thus constituting a breach in the application of the law.

C. The Right to Legal Assistance:

The accused is entitled to the assistance of a lawyer at the trial phase. This right is not inconsistent with the personal right of the accused to defend himself, since in the end, the latter is still the one directly and primarily responsible for his own defense, with the lawyer acting on his behalf as his legal counsel. As a result, the accused continues to have his fate in his hands, even if his ideas conflict with the lawyer's. (Al-Ghiryani, 2011).

The accused's right to defend with the aid of counsel de parted has been created as an instrument of defense, allowing the accused to establish his innocence or criminal liability or to admit guilt and mitigate punishment. There is no doubt that the presence of a lawyer provides the accused with peace of mind and supports him because he knows the law better than the accused and also understands the way to deal with the court, even giving legal advice, managing also the behavior of the accused, compelling his feelings and emotions, and respecting his own rights and duties. Furthermore, the attorney examines evidence against the accused, checks the validity of due processes, and inspects the application of the law. Therefore, the

lawyer is the protector of the proper procedure of the trial by way of preventing the abuse of power and prevention via promise or threat to the accused (Shukri, 2018).

To ensure the effectiveness of the accused's right to legal counsel, and to prevent this right from becoming merely theoretical or superficial, certain fundamental conditions must be met. Recognizing the lawyer as a cornerstone of the right to defense requires robust support for the accused's right to a fair trial, as detailed below:

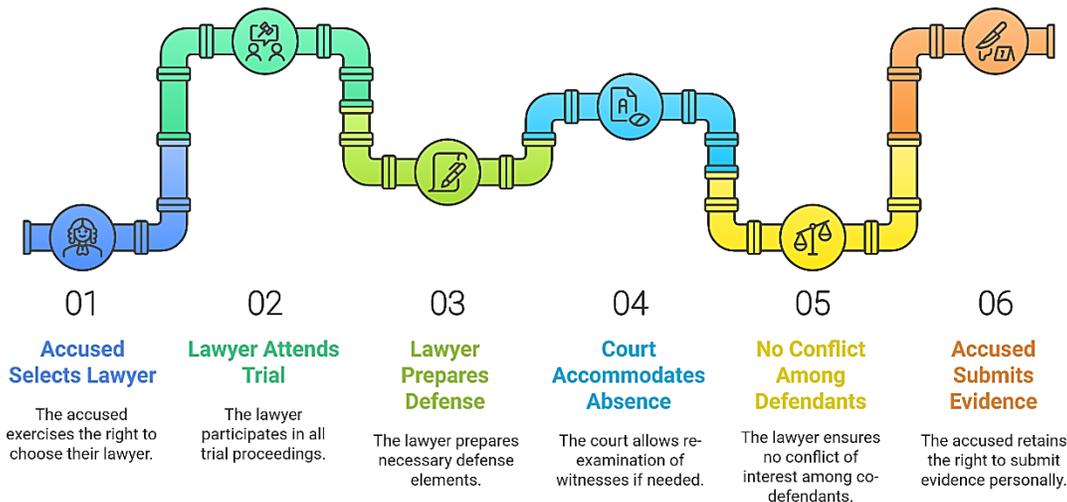


Figure (1): Legal Representation in Criminal Proceedings

The jurisprudence of the European Court of Human Rights (ECtHR) has been an important guide in interpreting and implementing the right to counsel under Article (6) of the European Convention on Human Rights. This article provides that everyone who stands accused of an offense shall have the right to defend himself, which means either personally or through legal representation of his choice. This includes the right to access free legal counsel if the accused does not have enough resources to pay for a lawyer and it is in the interests of justice to do so (European Court of Human Rights [ECHR], 2022).

Considering the above, the ECtHR declared in one of its judgments that the right of the suspect to be represented by an attorney extends to the point of the very registration of the suspicion against each suspect and not only to the phase of the trial. The Court further adopted the view that the failure to provide a lawyer during the process of investigation at the early stage unfairly puts defense rights at stake and makes the hearing unfair (*Salduz v. Turkey*, 2008).

In another judgment, the ECtHR emphasized the importance of the defendant's right to counsel in terms of the functionality of criminal justice. The Court underlined that that right should be applicable to all criminal procedure stages (*Ibrahim and Others v. the United Kingdom*, 2016).

Therefore, it held that access to legal representation during police interrogation is vital and the failure of the defendant to have a lawyer affects the fairness of the trial unless a good and sufficient reason is given for the failure. When conditions justify proceeding in two chambers, the grounds for this must be proven by the prosecution, otherwise, the trial is null.

The ECtHR emphasized in another decision that the right to meet a lawyer has two components: a right to talk to a lawyer before interrogation and to consult with him and a right to have a lawyer present during interrogation and any further questioning before trial. And so, with as practical a mechanism that can reasonably be when it does and will mean truly effective legal assistance (*Beuze v. Belgium*, 2018).

4. Mechanisms for the Exercise of the Right to Defense

A. The Right to Silence:

While the accused exercises his right of defense and denies the accusations against him, he can articulate the words he wants. The defendant may freely make a statement, and he may exercise his right to remain silent if he feels that what he has to say is not to his advantage. The silence of the accused is therefore considered in

law and jurisprudence as a reflection of the right of defense to freely determine the most suitable defense strategy, which may indeed consist in the refusal of any statement (Khaleel, 1982).

Should a defendant wish to remain silent and prefer not to speak at all during the stages of the criminal process, the judiciary should respect this right and cannot interpret it as prejudicial against the defendant. Under the civil law concept of principles, silence should not be regarded as confession or agreement. It includes, additionally, a neutral attitude of mind regarding the defendant's supplying of evidence against himself (Nabrawi, 1968).

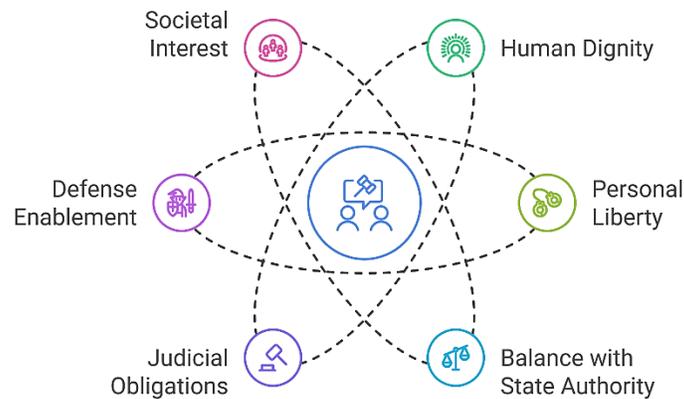


Figure (2): The Right to Silence in Criminal Justice

The right to silence of the accused is a fundamental human right inherent in person and is associated with the dignified existence of a person. It is a compromise between the law in favor of the accused and the government, wherein the accused cannot be forced to testify against himself. What we don't need are magistrates who take shortcuts and allow impunity to prevail and circumvent the responsibility of the judiciary to investigate and find out the truth through impenetrable evidence (Khamis, 2006). At least in this context, then, the right to silence serves private as well as public functions: It is not a private right on its own, protecting the accused in

the courtroom against the State’s agents, but also a public right that protects the public, indirectly at least—since it protects the means by which the truth will be determined—from overreaching prosecutors. The right did not exist in the Middle Ages when the practice of compelling the accused to give evidence did exist despite the use of torture. What judges of the day did was to take confessions out of people and to make decisions after that based on these confessions (Nabrawi, 1968).

In contemporary jurisprudence, most criminal law doctrines support recognition of the right to silence. Nonetheless, there are opposing views contesting the existence of this right, each backed by distinct arguments.

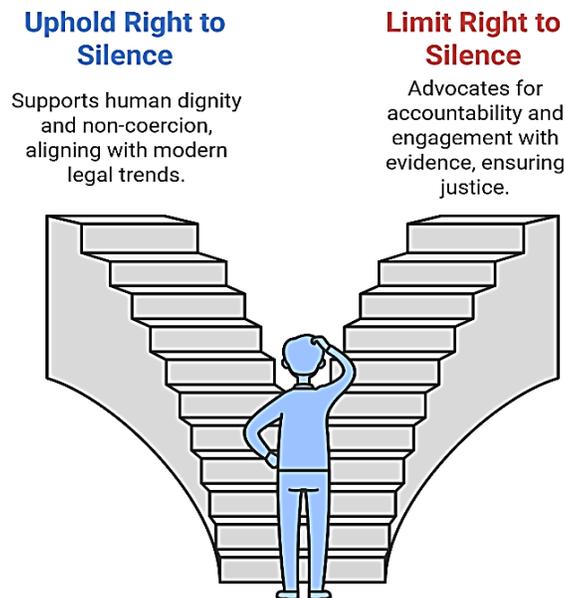


Figure (3): Should the right to silence be upheld or limited?

- i. Proponents of the right to silence maintain that silence is not to be equated with guilt and that to treat it as such would be a covert form of compellability. Accordingly, Courts are barred from drawing any adverse inference on the silence of the accused because silence does amount to an exercise of the right

available to an accused under the relevant provisions of our constitution. Equally, this right excludes the possibility of assuming that silence could be perceived as an admission of the accused's incapacity to protect himself (Farhan, 2018). Forcing the accused to talk, some jurists argue, defeat the purpose of criminal investigation and trials themselves — which is to get at the truth (Mustafa, 1988). It is the case that a person can be made to talk, but it is far less likely for a subject to tell the truth than to be forced to talk. Although standing on the right to silence might complicate the investigation, it is consistent with the modern legal trend of respecting human dignity, even that of suspected people. Therefore, if the accused imputes silence, all concerned have an obligation to remain silent, as well (Ahmed, 2003).

- ii. Others who are against the right to silence do not agree with the above arguments as well, arguing that the suspect is under duty to take a stand in relation to evidence and suspicions raised against him. Therefore, he must rely on these defenses to disprove facts claimed against him or admit to them and then apply for reduction or exemption of the criminal charge. Thus, the right to remain silent, and therefore the right to deceive, should be rejected in the eyes of this view. Rather, his rights are limited to requesting procedural protections extended during questioning. Once these protections are in place, the accused has a moral or ethical duty to speak honestly; as a matter of right, too, since deception undermines the inquiry. However, there are no legal tools to make the defendant speak, nor to force the confession out; recognition of such methods would lead to downgrading the defendant's procedural guarantees (Al-Kubaisi, 1981).

However, as the right to silence of the accused is a part and parcel of his freedom of speech, several statutes and international conferences have upheld this concept. The International Conference on Human Rights in Criminal Procedure, held in Vienna (1960), declared that the accused had the full right to make a statement or, on the

contrary, not to respond to any question asked, without being obliged to speak (Al-Ghiryani, 2011).

Also, although the UDHR does not explicitly refer to this principle, its spirit and core principles implicitly support it by emphasizing respect for human dignity, by prohibiting the use of torture, and by respecting the right of accused persons not to make statements under duress (Ahmed, 2003). Within Arab legislation, silence of the accused is not specifically declared within the Egyptian statutory law; however, it is indirectly approved by Art. 274(1) of the Egyptian criminal procedure law, which provides that “the accused shall constitute the first unchangeable standard of evidence... The accused might be subjected to the hearing after his approval... If the accused refrains to answer questions or makes courtroom statements that are in contrast to the ones made during the previous evidence procedures or investigations, the court may order the reading of the initial statements.”

There is not a scintilla of case law to suggest that a defendant’s silence or failure to answer a query by a court should be admitted or accepted as proof of guilt or a ground of conviction. From common law to constitutional law, one and all agree that the accused’s silence or refusal to answer a question from the court can never be a sign of culpability or evidence of conviction (Surur, 1970).

B. The Right to an Interpreter:

The right to an interpreter free of charge is a legally recognized right both for suspects and individuals accused (Al-Jumaili, 1973). One of the professional services to be employed during judicial processes was translation (Osman, 1964), because language provides the fundamental mode of communication through any criminal trial. To achieve justice, it is very important to understand the language of the court since translators are commonly used by judges to deal with questionnaire techniques. The interpreter renders with facility statements of persons that for any reason must testify during the trial, be they defendants, complainants, or witnesses. This serves

to ensure complete clarity regarding the criminal case and to aid the pursuit of justice (Bakkar, 1970).

Defendants who are not familiar with the language or who do not comprehend the official language of the court should be given accurate interpretations of the substance of the charges against them, as well as all essential facts of the accusations, any facts that may serve to establish or mitigate their inevitable guilt, the legal provisions pertinent to their case, and the evidence which supports their guilty verdict. But the court is not required to translate the entire case file. The translation requirement extends only to documents that are necessary for the defendant's defense. This right also ensures that defendants receive fair treatment in court through the realization of due process and open the doors of the courtrooms by obviating the linguistic gap that exists between haves and the have-nots of legal language (Al-Buainain, 2006).

International conventions and declarations explicitly provide that any person charged with a criminal offence shall have the right to a free interpreter if he cannot understand or speak the language of the trial. The International Covenant on Civil and Political Rights (Article 14/3) states in its details: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees: ...to have the free assistance of an interpreter if he cannot understand or speak the language used in court." Also, Article 6(3) of the European Convention on Human Rights states: "Everyone charged with a criminal offence has the following minimum rights [...] to the free assistance of an interpreter if he cannot understand or speak the language used in court."

In this connection, the European Court of Human Rights (ECtHR) has stressed the requirement for interpreters for defendants that do not speak the language in the courtroom. One of its decisions specifically noted that not giving an interpreter to these defendants was a breach of their Article 6 rights; as it made it impossible, in practice, for the accused to understand the proceedings and to defend him or herself

in an effective manner (*Vizgirda v. Slovenia*, 2018). The ECtHR has also established in several case law that the presence of an interpreter during courtroom hearings is not enough and that key legal documents need to be translated to enable defendants to understand the full extent and consequences of their case (*Lagerblom v. Sweden*, 2003).

The prior rulings reflect the view taken by the European Courts in interpreting Art. 6(3) of the European Convention on Human Rights, that this right exists in a way that guarantees that the defendant is fully aware of the charges and the stage of the process that is being reached. Because of the importance of this crucial procedural protection, some comparative procedural laws make it mandatory for the courts to furnish interpreters to defendants. The aim is to ensure clarity for the accused at every point envisaged by the Code of Criminal Procedure.

This procedural guarantee has been expressly reiterated by the Omani legislature and is enshrined in Article 3 of the Omani Criminal Procedure Law that provides, "everything that is stated in this law must be done in the Arabic language and that a witness's or an accused's statements, who does not know Arabic, must be taken through an interpreter and after taking the oath."

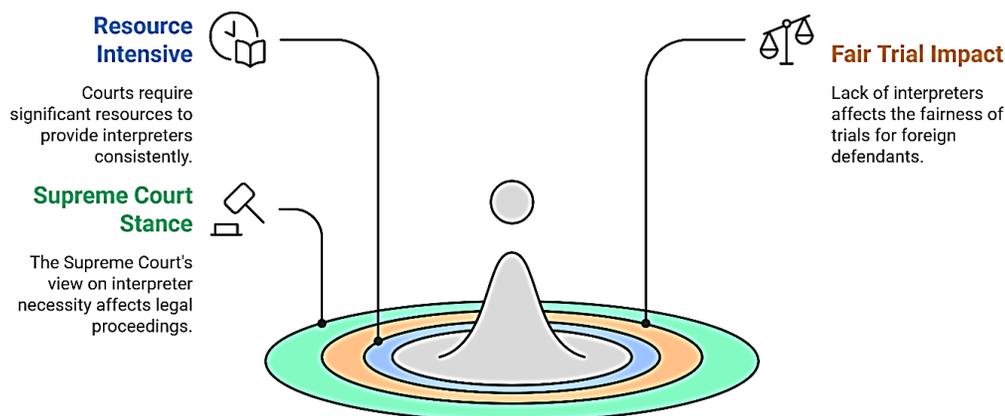


Figure (4): Judicial Interpretation Challenge

However, the courts face considerable difficulties in the sustained provision of competent interpreters to all foreign defendants; their different nationalities and dialects make it much more difficult to maintain this service consistently. It involves a significant number of resources and an ongoing effort to support courtrooms having on-the-spot interpretation services in place permanently. These problems are compounded by the fact that a growing number of cases include defendants who speak a wide array of languages, constraining the courts from being able to offer fair and effective hearings. With respect to the consequences of not using an interpreter during the trial, an analysis of the Omani judiciary's position indicates development in the Supreme Court's previous position. First, the Supreme Court held that the lack of an interpreter did not render defective the conduct of the trial, reasoning as follows: "The use of an interpreter is a matter of the defendant's private interest, and failure to provide one does not, unless objection is made, render defective the conduct of the trial: Accordingly, appellant's contentions in this respect are without merit." (Supreme Court of Oman Criminal Chamber, 2018).

C. The Right of the Accused to the Final Word:

The right of defendants to be last heard is a facet of the right of defense which is of cardinal significance and must be respected. Grant of final hearing to accused at the time of final arguments is a valuable right which enables him to clear his stand completely and make full efforts to present his side of the case. These rights largely benefit the accused, because he can give explanations or contradict some evidence presented by the prosecution and therefore help to affect the process of the trial until the court makes its final decision. Accordingly, the court is required to attentively hear the defense of the accused and to weigh in depth all those points which he brings out in connection with the charges against him. Moreover, the examination of the defense is expected to be scrupulous, reasoning the arguments and interpreting evidence after the manner of the defense (Hosni, 1988).

The principle that "the accused shall speak last" is a basic tenet from which there can be no departure without undermining the right of defense. This rule allows the accused one last chance to put forward any statement or defenses that he wishes. If the courts neglect or disregard the defendant's request for the final word, it constitutes a violation of his right to defense (Khamis, 2006). Ignoring this principle necessitates invalidating the proceedings if the accused or his lawyer insists on this right (Salama, 2010). Additionally, the counsel's presence with the accused does not cancel out the accused's autonomous right to offer defenses or requests. The Court must hear from the defendant, even if his story contradicts that of his advisers, and must reply specifically and substantively to such explanations, if they pertain to the case (Foda, 1992).

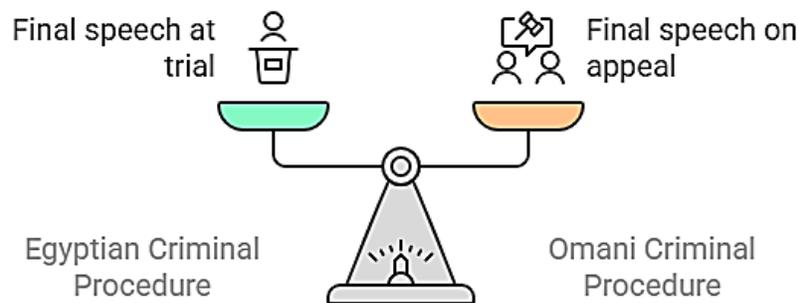


Figure (5): A Final Note on Speech Rights in Criminal Trials

Significantly, the Egyptian lawmaker explicitly recognizes this right in Article 275 of the Egyptian Criminal Procedure Law, which reads: "After the testimony of prosecution witnesses and defense witnesses has been heard by the court, the judge shall invite to speak in order the public prosecution, the accused, and the other parties to the case." In no instance shall the accused have the opening. On the other hand, the Omani legislator does not take a clear stance about this method at the level of the first-instance court. Rather, it is provided for in Article 241 of the Omani Criminal Procedure Law, which gives rise to the right at the appellate level after the

pronouncement of a first-instance judgment, reading: "If the court finds the appeal is formally admitted, it hears statements and requests by the appellant before hearing statements from other parties, and then the convicted is to speak." From the wording of this article, the Omani legislator expressly provided in the Omani law a guarantee to the convicted (though not to the accused prior to the first-instance judgment) of this right. The result is hence an absence of a formal legal duty of Omani courts to tell the accused that he may speak last and give a final statement at the first-instance level.

The researcher supports the Egyptian position, opting for overt inclusion of such a right at the trial stage, with such a right being unambiguously stated in the law to dispel confusion and prevent the risk of interpretive variation in the law or judicial practice.

In any event, this right should be explicitly guaranteed at every stage of the trial process, both at the first-instance trial stage, immediately before rendering judgment against the accused, and at the appellate stage following the issuance of a judgment against the convicted individual. This right is established exclusively for the benefit of the accused and the convicted person.

5. Recommendations

- There should be national oversight of prosecution and court proceedings, as with most of the legislation in respect of separation of prosecutorial and investigative powers.
- Applying more severe disciplinary penalties to police officers determined to have violated defense rights assurances.
- We call on the Omani legislator to modify its legislation to add language to require, in all criminal cases, including misdemeanors, defense representation of defendants.

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- We demand that the Omani legislator amend the Criminal Procedure Law to codify the accused's right to speak last, prior to the issuance of the verdict, in all stages of the criminal proceedings, not only during the appellate procedure, and to include in the Criminal Procedure Law a new article which reads as follows: "The accused shall be entitled to sufficient time to submit his final defense before the closing of pleadings."

6. Conclusion and Outcomes

- This study examines the right to defend as a fundamental and natural right inherently interconnected with several constitutional rights, whose primary goal is to ensure justice. To effectively benefit from this right, certain personal and substantive conditions must be satisfied. This right has been explicitly acknowledged by most Arab constitutions, with the researcher observing its clarity particularly in the Omani Constitution, resulting in defining the nature of this right and its fundamental guarantees. The researcher considers the presumption of innocence and the principle of criminal legality as the basis for these guarantees.
- This study has also highlighted essential guarantees provided to the accused, including the positive right to attend investigation procedures, the necessity to be clearly informed of the charges against him, the right to refrain from speaking when it is against his interest, without being compelled to testify under oath or as a witness. Furthermore, the study examined manifestations of this right during trial proceedings, evaluating the extent to which these guarantees are upheld. It was observed that the accused's right to defense is unevenly implemented, as guarantees tend to be more effective in trial phases. Nevertheless, many of these guarantees remain formal and inadequately respected in practice, exhibiting deficiencies that may occasionally undermine defense rights. Finally, the study highlighted possible breaches of these rights and their implications, emphasizing that such breaches might significantly compromise the accused's defense and fair trial rights.

References

1. Abu Shoqa, M. B. (2002). *Guarantees of the accused during the criminal trial phase* [Doctoral dissertation, Faculty of Law, Cairo University].
2. Ahmed, H. M. (2003). *The accused's right to silence*. Dar Al-Nahda Al-Arabiya.
3. Al-Ajili, L. K. (2012). *The right to promptness in criminal procedures*. Al-Halabi Legal Publications.
4. Al-Buainain, A. F. (2006). *Guarantees of the accused during the trial stage in Arab legislation* [Doctoral dissertation, Cairo University].
5. Al-Ghiryani, M. (2011). *Interrogation of the accused and its guarantees during criminal proceedings* (1st ed.). Dar Al-Nahda Al-Arabiya.
6. Al-Jumaili, A. (1973). *Criminal investigation: Law and art*. Dar Al-Salam Press.
7. Al-Kubaisi, A. S. (1981). *Guarantees for the accused before and during the trial* [Doctoral dissertation, Faculty of Law, Cairo University].
8. Al-Qadi, M. M. (2008). *Human rights to a fair trial* (2nd ed.). Dar Al-Nahda Al-Arabiya.
9. Al-Marsafawi, H. S. (1973). *Fair trial guarantees in Arab legislation*. Institute of Arab Research and Studies, League of Arab States.
10. Al-Mukhtar, A. A. (1981). *Guarantees for the integrity of criminal judgments*. Al-Adeeb Press.
11. Awad, A. M. (1987). The accused's right to counsel. *Journal of the Contemporary Muslim Association*, 13(49), 67.
12. Bakkar, H. (1997). Protection of the accused's right to a fair trial. *Mansha'at Al-Maaref*.
13. Bashit, H. K. (1979). *Guarantees for the accused in public prosecution during the trial phase* [Master's thesis, Faculty of Law, Baghdad University].
14. *Beuze v. Belgium* [GC], no. 71409/10, ECHR (2018, November 9).
15. Constitutional Court of Egypt. (1997). Judgment in Case No. 78, issued on January 7, 1997. In *Collection of Judgments of the Supreme Constitutional Court* (Vol. 8, p. 1108).
16. European Court of Human Rights. (2022). *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb)*. Registry of the Court.
17. Farhan, N. K. (2018). *Guarantees of the accused during the trial phase*. Al-Halabi Legal Publications.
18. Foda, A. (1992). *The Criminal Court: A study of its activity and the role of defence in light of jurisprudence and judiciary*. Mansha'at Al-Maaref.

19. Ghannam, G. M. (1992). The right of the accused to a speedy trial in American law. *Kuwait Law Journal*, (1), 88.
20. Hassan, M. (1970). *The accused's right to counsel in comparative law* [Doctoral dissertation, Faculty of Law, Cairo University].
21. Hosni, M. N. (1988). *Explanation of criminal procedure law* (12th ed.). Cairo University Press.
22. Ibrahim and Others v. the United Kingdom [GC], nos. 50541/08 and 3 others, ECHR (2016, September 13).
23. Khaleel, A. D. (1982). *Legality of evidence in criminal matters* [Doctoral dissertation, Faculty of Law, Ain Shams University].
24. Khamees, M. (2006). *Violation of the accused's right to defence*. Mansha'at Al-Maaref.
25. Lagerblom v. Sweden, no. 26891/95, ECHR (2003, January 14).
26. Ahmed, H. M. (2003). *The accused's right to silence*. Dar Al-Nahda Al-Arabiya.
27. Murad, A. F. (1989). *Practical criminal investigation in Islamic jurisprudence and positive law*. Shabab Al-Jamia Press.
28. Mustafa, M. M. (1988). *Explanation of criminal procedure law* (12th ed.). Cairo University Press.
29. Mustafa, Y. (2009). *Legal protection for criminal trials*. Dar Al-Kutub Al-Qanunia.
30. Nabrawi, M. S. (1968). *Interrogation of the accused*. Dar Al-Nahda Al-Arabiya.
31. Osman, A. A. (1964). *Expertise in criminal matters* [Doctoral dissertation, Faculty of Law, Cairo University].
32. Qourari, F. M. (2006). The accused's right to trial within a reasonable time. *Kuwait Law Journal*, (30), 253.
33. Salama, M. M. (2010). *Criminal procedure law* (3rd ed.). Dar Tiba.
34. Salduz v. Turkey [GC], no. 36391/02, ECHR (2008).
35. Shukri, A. (2018). *Guarantees of the accused's right to a fair trial in the light of international human rights conventions, instruments, and declarations* (1st ed.). Zain Legal Publications.
36. Supreme Court Criminal Chamber. (2006). Judgment No. 329/2006 issued on October 17, 2006. In *Collection of Supreme Court Criminal Chamber Judgments and Extracted Principles*.
37. Supreme Court Criminal Chamber. (2018). Judgment No. 364/2018 issued on November 19, 2018. In *Collection of Supreme Court Criminal Chamber Judgments and Extracted Principles*, 308.

-
38. Surur, A. F. (2000). *Constitutional protection of rights and freedoms* (2nd ed.). Dar Al-Shorouk.
39. Surur, A. F. (1970). *Explanation of criminal procedure law*. Dar Al-Nahda Al-Arabiya.
40. Vizgirda v. Slovenia, no. 59868/08, ECHR (2018, August 28).