The Argumentum of Judge's Knowledge in Iranian and French Laws: A Brief Comparison of Iranian and French Legal systems

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ABSTRACT

There is considerable controversy among jurisprudents and legal experts over the argumentum and scope of the application of a judge’s knowledge. This paper discusses the solutions which French jurisprudents and Imamieh jurisprudents have proposed to the issue of the judge’s knowledge. It is argued in the paper that under certain circumstances the judge’s knowledge is considered to have argumentum and authority; that is, it depends on the acceptability and typicality of the document for his knowledge, the presence and attachment of the document of knowledge in the dossier and the statement of the underlying knowledge document of the verdict by the judge. Most importantly, it will be indicated that reliance on the argumentum of a judge’s knowledge should not contradict the falsifiability and questionability principle of judgment and also the accused person’s right of defense should be respected and acknowledged. However, although the right of God is distinguished from the rights of people and in spite of the authority of expression, in vague aspects of laws and in certain predicted conditions, the judge’s knowledge does not have argumentum and authority.

INTRODUCTION

Maybe, the most effective way for proving a lawsuit is to gain the judge’s confidence and establish his trust and confidence. In general, it can be maintained that the adequacy and the argumentum of other types of reasoning and evidences depend upon the amount of confidence and trust which a judge obtains in a lawsuit. Inasmuch as the quintessence of laws is to protect justice, the quintessence of evidence and argument is to establish knowledge and perception in the judge’s conscience.

The establishment of knowledge and trust towards something is so important in French penal codes and laws that it is regarded as the only significant evidence [2]; that is, all the other types of evidences such as confession and witnesses’ testimonies are as important as they create knowledge for the judge; hence the legitimacy of all the evidences and testimonies are evaluated by the degree of knowledge they establish in the judge’s system of knowledge and conscience. In contrast with French Laws, according to article 1335 [civil Laws] in Iranian Laws, the judge’s knowledge is only considered as one evidence among many pieces of evidence and arguments in different sections of the Islamic penal Laws.

In this paper, the author will be first concerned with defining, describing and explaining the concept of judge’s knowledge; then, the paper will discuss the cases in which the judge’s knowledge can by nature be regarded as an adequate argumentum in terms of the stages of judgment. Then, after proving and substantiating the truth of a judge’s knowledge as an argument and evidence, the author will characterize the conditions and cases in which the judge’s knowledge has argumentum and authority for giving a verdict.

2. Defining and clarifying judge’s knowledge:

While discussing the legitimacy or illegitimacy of the judge’s knowledge, we do not mean his/her knowledge of the evidence and reasons for imposing a sentence since this type of knowledge is essential and necessary for judgment and it is presupposed that the judge should have this type of knowledge as a part of their duty [3]. At issue here is the type of knowledge which is related to proving contentious matters because the judge needs to reach complete confidence in something in order to substantiate it. This knowledge is divided into two types: the first one is the knowledge which a judge obtains independently of the documents and evidences of a particular case. For example, the judge himself experiences an event or realizes it through contact with people in society and hence obtains some knowledge in this way. Also, we mean the knowledge which a judge gathers by
studying the documents of a particular dossier hence he gains certain intuitions which are directly related to a particular dossier. Although both types of knowledge are considered, the controversy is over the knowledge which is obtained independently of the dossier.

A remarkable consideration about a judge’s knowledge is that it should be gathered via typical and certain methods. In other words, the way though which a judge obtains knowledge should be the same as and as valid as the one by which people gain different kinds of knowledge; if a judge dreams, or is inspired by a dream or some other way that the accused has committed a crime or has occupied a property, his knowledge will not be regarded valid and rational. Accordingly, it can be maintained that the knowledge obtained through geomancy, witchcraft or telepathy lacks reasoning and rationality because they are not established and regular methods of obtaining knowledge and are regarded as abnormal and unusual ways of data collection. However, on the basis of some signs such as the accused person’s attempt to escape [4] or the paleness and change in the accused person’s complexion at the time of trial, it is likely, though faintly, to understand the accused person’s involvement in a crime. By and large, the typicality criterion of the way of acquiring his knowledge is the condition a judge should consider in assessing and applying his knowledge; we will discuss this point in more detail later in the subsection about the requirements and conditions of relying on the judge’s knowledge. Suffice it to say that the knowledge acquired through expert and specialist sources which are typically positive and well-respected sources of data collection are regarded as valid.

3. Different functions of the judge’s knowledge in penal and civil cases:

The role of the judge’s knowledge in civil affairs is different from that in penal affairs. Regarding civil cases, the judge’s knowledge is involved and applied in examining the rationality and reasonability of an argument and evidence but when that evidence is substantiated, there will be no room for the judge to disregard the argument and he is obliged to give his verdict based on legal arguments. For example, in case a judge considers the accused person’s statement and confession as false, he can no longer give a sentence based on it. Therefore, the way of detecting and understanding the falsehood of a statement or the untruth of a witness’s testimony is based on the knowledge the judge acquires through the arguments and evidences. However, in contrast with civil matters where the judge’s knowledge is applied only for investigating the reasonability and rationality of arguments, in penal cases, the judge’s knowledge is regarded as the underlying source for giving a sentence hence, it is an accurate and independent reason and argument for substantiating the truth. That is to say, in penal cases, the judge’s knowledge is used not only for evaluating the presented arguments and evidences but also it is used as a criterion and argumentum for giving a sentence. In this case, the legitimacy of a piece of evidence or an argument depends upon the amount of confidence obtained for the judge. As for a witness’s testimony, however valid an argument or reason may be, as long as it does not lead to the acquisition of a judge’s knowledge, it will not have any reasonability and rationality. The judge himself/herself should conscientiously consider whether the documents of a dossier lead to the acquisition of related knowledge for him regardless of how important they may look; in case the judge gives a verdict based on the documents for which he has not obtained any relevant knowledge, he is responsible for violations of people’s right and possession and any violations on his part will be retributed and penalized by God. Regrettfully, there is no criterion and standard to evaluate the judge’s state of knowledge and when the judge mentions that he has acquired or has not acquired the required knowledge, he is just acknowledged. Imam Khomeini in his book Tahrir Alvasileh has observed that the judge cannot act according to a confession, observation or an oath which is against his knowledge. As mentioned earlier, the justification for ignoring a confession or observation is that the judge may consider the confession as false; therefore, the argumentum of a confession or evidence is not genuine. That is to say, the argumentum of a confession is relative and it is a function of the argumentum of the judge’s knowledge but the argumentum of the judge’s knowledge is innate. Fabrication and falsification of evidences such as testimony and confession might be acknowledged by somebody who is not aware of the truth but a judge who is well-acquainted with the truth should not validate false evidences. Indeed, if a judge acquires false knowledge, he cannot refer to it as a source for giving a sentence.

Likewise, in French penal system of codes which was established and organized by Napoleon Bonaparte the truth of the incidents which are related to a claim are allowed to be substantiated by any kind of effective arguments [5]. Therefore, penal issues differ from civil issues in that in uncovering the truth and giving a sentence according to the truth the judge should not be limited to specific evidences, arguments and documents. On the contrary, the judge should be actively involved in substantiating a claim or argument. According to the French penal laws, the value of any argument or reason is considered to be a function of the amount of knowledge it can gather for the judge [The system of judge’s knowledge, article 353]. Unlike civil matters, in penal cases, no argument or evidence inherently has a predetermined value and it is the judge who determines and decides the value of the reasonability or rationality of a reason or argument. Furthermore, the number of required evidences and arguments for substantiating an event is not predetermined; hence, a French judge can rely on any kind of evidence and document which he considers to be effective in obtaining the relevant knowledge and substantiating the truth.
The acquisition of knowledge is the most important concern for a French judge. According to the Penal judicial system of Iran, the lack of an obligation for determining the quantity and number of required reasons and arguments for penal affairs indicates that anything or event which can substantiate the existence or truth of something can be considered to be an argument or reason; this is regardless of whether the argument belongs to the well-established and classic group of arguments such as confession, testimony of a witness or an oath. In the following subsection, the impacts and results of accepting or rejecting the judge’s knowledge will be discussed.

4. Impacts and results of a judicial system based on the knowledge of a judge:

Accepting a judicial system based on the judge’s knowledge might have some advantages and disadvantages for the accused person. This judicial system can bring about disadvantages for the accused inasmuch the judge plays the major role in pressing the charge upon the accused person and can nullify and invalidate the presumption of innocence or the guiltlessness statement of the accused person and declare him as a convict. That is, the judge bears the responsibility for substantiating the arguments and evidences. In case the accused person keeps silent rather than showing any reaction, then, this absolute silence might be interpreted as indirect admission or confession to the crime and this is damaging and undesirable for him. In other words, the accused person should usually be actively involved in the process of a lawsuit to obtain the judge’s confidence and try to substantiate his innocence by means of evidence and argument. The accused person’s passiveness can cause a contradiction in the nature of the judge’s knowledge system.

From a different point of view, the judge’s knowledge system might provide benefits for the accused person. That is, accepting the judge’s knowledge system gives the accused person the right to try to confuse the judge’s conscience and prevent him from acquiring the required knowledge and the accused person takes the advantage from the judge’s doubt and state of uncertainty. The presumption of innocence also helps the accused person by taking shelter; hence, he doubtfully keeps the judge out of action and only in case there are adequate arguments and evidence, a criminal conviction will be given for him. The presumption of innocence as a strong shield and Dr’ rule will provide the accused person with a shelter so as to evade and exempt himself from presenting evidence and argument.

5. The argumentum of judge’s knowledge in Islamic jurisprudence and case law:

Islamic jurisprudence has its own views about the argumentum of a judge’s knowledge; on the whole, there are four viewpoints in this regard. Some Islamic jurisprudents consider the judge’s knowledge as an absolute argumentum but a second group does not regard any argumentum for it. The third group of Islamic jurisprudents limits the argumentum of the judge’s knowledge to the right of God but this group of jurisprudents believes that a judge cannot rely on and apply his knowledge in case of the people’s rights to give a sentence. Finally, the fourth group of Islamic jurisprudents believes in the argumentum of the judge’s knowledge in the judge’s knowledge in the people’s rights but they disregard any argumentum for his knowledge in the case of the right of God [6]. The first view is popular among Imamieh jurisprudents; they believe that the judge’s knowledge is regarded as the adequate evidence and authority not only in the right of God but also in the people’s rights in both civil and penal cases. In line with this view, Imam Khomeini, in issue 8 of his book Tahrir Alvasileh has observed that “The judge may rule his knowledge without evidence of approval or NATO in the people's rights, as well as the rights of God, but he may not rule if contrary to his knowledge, or alliances of being a liar in his view”[7]. As might be expected, some jurisprudents believe in reply to detail arguing that if the judge's knowledge was formed at a time before he became a judge, then, his knowledge does not have argumentum but if the judge’s knowledge was formed after he became a judge, his knowledge has argumentum and authority. These Islamic jurisprudents refer to an account or story with regard to the argumentum of judge's knowledge in the right of God and people's right. According to this account or story which they quote, the judge can be allowed to rely on his knowledge if he himself is the direct witness of that specific case. The content of this account is as follows: “Incase Imam [a religious leader] directly witnesses a man who is committing the crime of adultery or drinks wine (any kind of alcoholic drink), he must perform and inflict the penance and since he has observed the event, there is no need to substantiate and prove the crime."It has been argued that Imam [the religious leader] is an honest and reliable person and is regarded as the representative of God and can punish and stop people from committing crimes if he observes them. Of course, it should be mentioned that some jurisprudents have reiterated that just in case the underlying evidence for judge's knowledge is exact visual observation, his knowledge is considered to have argumentum and authority. This is due to the fact that the account and story to which they refer includes the word “observation”. In the Arabic language, the term observation is interpreted as the exact watching of something with all details which can result in the acquisition of knowledge. Therefore, in case the judge's knowledge was acquired through a sense other than exact visual observation or if the knowledge was obtained via cursory and superficial observation, then, it is regarded as conflict watches and cannot bring argument and authority for that knowledge. On the other hand, in case the judge directly sees the accused person in a different location at the time of crime, then, the judge can be confident that the accused person has no culpability and responsibility in the crime; in such a case, the judge should rely on and refer to his knowledge.
and should not take the contradictory testimonies into account. However, with regard to this issue, Imam Khomeini has argued that if nothing is mentioned specifically about a particular case and if the judge desires, he is given the option to refuse judging that particular dossier and can assign it to another judge.

The second rationale and reason which is cited for the argumentum of the judge's knowledge is a verse [a numbered verse in holy Quran]: “Refrain from doing whatever for which you have not acquired the knowledge [10].” Also, another basis for rationalizing the judge's knowledge is the Alsarug verse in Quran [11]. The former verse indicates that if you have the knowledge for something, hence, do it and the second versegives people the right to cut a thief's hand. Indeed, it is evident that the truth and reality about a thief should be determined and declared by means of the judge's knowledge so that he can be convicted and the sentence can be given.

Furthermore, the proponents for the authority and argumentum of the judge's knowledge have eventually resorted to a verbal rationale as another basis for explaining and validating the argumentum of the judge's knowledge. That is, their proposed verbal rationale and reasoning is that the argumentum of the judge's knowledge is an innate knowledge but not a superficial, literal and artificial concept. Of course, the fact that whether the judge is a scholarly and assiduous clergyman or an authorized and licensed person will not make a difference in the knowledge since the knowledge is considered to be innate and does not originate from the rank, reputation and credit of a person.

In this paper, the author is inclined to believe that other reasoning and rationales can be cited and mentioned for the argumentum of the judge's knowledge along with and in addition to the verbal reasoning and the rationales cited by the Islamic jurisprudents. It is argued here that some crimes are so complicated and intricate that they can only be substantiated by means of the judge's knowledge. In other words, there might be some cases in which neither the accused person confesses to the crime nor there are any witnesses for the crime. This is especially true of the cases where professional and skillful criminals have committed a crime. As a matter of fact, the judge's knowledge plays a critical role in discovering and learning about such crimes. Since some criminals use extraordinarily high intelligence and cleverness and a variety of expertise and skill in committing a crime, the judgemeny not be able to discover and substantiate these crimes by means of regular and typical arguments and evidence; hence, he has to refer to and rely on his knowledge to learn about and substantiate those crimes [12]. As a result, it should be stated that these kinds of crimes may not be discovered and substantiated unless the judge meticulously and brilliantly examines and studies the different angles of the case and asks for the experts and specialists' help.

The necessity for relying on the judge's knowledge can also be explained based on the purpose of the judgment; that is to say, according to the new and recent principles of trial and judgment, reaching the truth and reality is more important than resolving and settling hostility and this concept is inferred and deduced from Islamic jurisprudence and trial. It has been stated in article 199 [new] that the judge is given the option to do everything for reaching and substantiating the truth. Having realized the truth and reality, the judge should then write his verdict and should no longer lengthen the trial for no reason.

Furthermore, it is possible to rationalize and explain the utilization of the judge's knowledge based on the presumption of innocence [according to Islamic laws] or the presumption of the guiltlessness of the accused person [according to French laws]. In line with this presumption, unless there is convincing and cogent evidence and argument against the accused person, a verdict of innocence should be given. The author believes that the judge's knowledge not only does not contradict the presumption of innocence but also the legitimacy of making reference to the judge's knowledge can be justified by the presumption of innocence. It doesn't matter whether the innocence of the accused person is considered as a principle or a probable suspicion since the judge's knowledge is regarded as evidence and argument in the full sense of the word and it is more important than the presumption of innocence. Indeed, the argumentum of the judge's knowledge has no contradiction with the Dr'ruleinas much as the judge uses this rule when the matter in question is confusing and ambiguous for him. It is evident that at the presence of the judge's knowledge, there is no need for suspicion which is the justification for the Dr' rule.

However, those who are against the application of the judge's knowledge cite legal reasons to argue that a verdict given according to the judge's knowledge system, will be a sentimental verdict; hence, his immediate impressions and feelings which can sometimes be invalid and pointless will play the chief role in giving a sentence and these futile impressions and feelings cannot become the basis for the Laws and legal issues.

In reply to the above-mentioned argument, it can be mentioned that by the term the judge's knowledge, we mean a kind of certitude, confidence and a logical conclusion which a wise, intellectual and conscientious person can draw under typical and well-known circumstances and his spiritual and psychological characteristics are not involved in his judgment. In other words, the judge's knowledge is the result of an intellectual and rational attempt rather than an arbitrary and whimsical decision. As a matter of fact, it is the judge's mind and reasoning which should be convinced rather than his feelings. Giving prominence to judge's knowledge is not tantamount to the fact that the judge is allowed to interpret and evaluate the reasons as he likes; instead, the decisions and verdicts derived from the judge's knowledge should be identical to the decisions which any typical, wise and intellectual person can draw under the same circumstances.
Then, after explaining and proving the argumentum of the judge's knowledge another related and significant question which has provoked a lot of controversy among the jurisprudents and legal experts is that how much is the extent and scope of the application and functioning of the judge's knowledge system and how much validity and credit does it have among the jurisprudents?

5. Executive scope and extent of the judge's knowledge:

Despite the acknowledgment and recognition of the argumentum of the judge's knowledge, jurisprudents and legal experts disagree over the executive scope and extent of the judge's knowledge.

5.1. Scope of the judge's knowledge in terms of judgment procedures:

With regard to the scope of the application of the judge's knowledge, some believe that this kind of knowledge should be taken into consideration at all stages of the judgment but some others contend that the judge's knowledge should only be considered at the stage of giving a verdict. The latter opinion has been developed in recent years and has the majority among the jurisprudents; according to this opinion, if the judge's knowledge is used and considered at the investigation and inquiry stage of a judgment, it can lead to the distortion and misinterpretation in the process of judgment and hence hamper the discovery of reality.

In contrast with the above-mentioned group, another group [15] is of the opinion that the judge's knowledge should be considered and applied at every stage of judgment and in every dissuasive and deterrent court [16] and it should be utilized for evaluating every piece of evidence and argument [17]. This group of jurisprudents includes some renowned French jurisprudents such as Merle and Vitu [18] who believe that the judge's knowledge system has application in every stage of judgment and it can be put to use in relation to any kind of reason and argument.

It seems reasonable to argue that the judge’s knowledge system can be applied in every aspect and step of trial since this interpretation can be made from articles of the new judgment principles which do not isolate the different stages of judgment. As a result, ignoring the judge’s intervention or the type of the judge, the judge’s knowledge should be considered as an absolute argument. Hence, it can be mentioned that the judge’s knowledge is regarded as argumentum even for the judge at the Supreme Court. Based on his knowledge, the judge of the Supreme Court might find out that the initial judicial accounts and descriptions which the respective investigatory judge has presented do not comply with the legal regulations but at the same time the judge of the Supreme Court cannot invalidate or eliminate the knowledge of the initial investigatory judge. However, it seems that in the new court system, knowledge is considered as the assistant prosecutor and interrogator; hence, the judge’s knowledge at the initial investigatory stage does not have argumentum for giving a verdict. That is, a knowledge which has argumentum can be used by the judge as an intervention to give a verdict.

5.2. Exceptions of adherence to the judge’s knowledge:

Despite the fact that the judge’s knowledge is acknowledged as a substantiating evidence and argument, it is not always regarded as an absolutely effective argument in every case since the judge’s knowledge system has some exceptions. The exceptions to the judge’s knowledge are mentioned as follows:

A. The cases in which laws are vague and unclear despite the presence of the authority of declaration.

Although the 105th article of the Islamic penal laws gives the legitimate judge the absolute option to apply and refer to his knowledge with regard to the rights of God and people’s rights, this question is raised that whether the judge’s knowledge has argumentum in cases where the legislator has included the judge’s knowledge within the number of arguments and evidences?

In reply to this question, some jurisprudents believe that the Islamic penal laws and specifically the 105th article comply with Imam Khomeini’s views and ideologies and he gives the judge the option to refer to his knowledge in dealing with both rights of God and people’s rights. As a result, it can be maintained that in all the cases including civil and penal ones, the judge can absolutely take his knowledge into account. In particular, the book Alqaza which recognizes the judge’s knowledge as an absolute argumentum in both rights of God and people’s right generalizes to the other chapters and articles of jurisprudence. It should be pointed out that the legislator has referred to this decree and sentence in the 105th article in order to eradicate the doubt and has intended to emphasize that the judge can rely on his knowledge in an obvious case of the right of God.

On the other hand, it seems that in any case in which the legislator has not included the judge’s knowledge within the recognized number of arguments, the judge’s knowledge is not considered as an argument. That is, the judge’s knowledge should only be regarded as a substantiating argument or evidence in the following cases:

- When the legislator has not specified and mentioned the exact number and list of arguments and evidences for substantiating a crime.
- In case the legislator has directly included the judge’s knowledge among the arguments and evidences for substantiating the crime.

According to the Iranian Islamic penal code, disciplining and junior crimes and punishments are an example of the first case where the judge’s knowledge can be considered. In this category of crimes and punishments,
since the legislator has not predicted certain arguments and evidences for substantiating the crime, it is possible to act according to the 105th article of the penal code and consider an active role for the judge’s knowledge.

With respect to the second category of crimes mentioned above, the judge’s knowledge is not been mentioned in crimes such as working as a pimp, defamation, war and belligerence against the country and government and drinking wine. That is to say, for example, drinking wine can only be substantiated by means of the arguments and evidences which have clearly been specified and determined [witnesses’ testimony and the person’s confession]. Hence, even if the executors of court see the half-full bottles of wine or the scent of alcohol can be easily sniffed out of the accused person’s mouth, the judge cannot give the punishment and the sentence since the judge’s knowledge does not have argumentum and authority in this case.

Here, it can be discussed that inasmuch as the legislator has intentionally not included the judge’s knowledge among the evidences and arguments of substantiating the crime of drinking wine, hence, his knowledge does not have any argumentum and authority in this case. However, regarding other crimes like adultery and sodomization [homosexual relations with a young boy], murder [19] and theft [20], the judge’s knowledge has argumentum and authority. In general, the above-mentioned cases are excluded from the assumption of the judge’s knowledge. In particular, article 105 has led to confusion and misunderstanding of the crime of adultery since this article which allows for the argumentum of the judge’s knowledge has been mentioned for this crime and the right of God and right of people in this regard refers to special instances of this crime.

The conclusion to be drawn from the discussion above is that despite the legislator’s general and overall recognition of the judge’s knowledge, the judge’s knowledge does not argumentum in cases which are not clearly and directly mentioned. Therefore, in case the judge’s knowledge does not have the argumentum, the judge should refer to jurisprudence, legal laws and the popular views among the jurisprudents and he should not independently and directly decide and give his sentence based on his knowledge.

B. Specific violations of laws and crimes

Some specific crimes and violations of the laws can only be substantiated by means of special reasons and evidences. That is, in these cases the judge cannot rely on any kind of evidence and argument unless they are justified. Most violations of driving regulations are included in this category where the records and documentations of the legal executors are considered as adequate evidence. This is why some jurisprudents give a lot of significance and credit to these evidences and if there are not claims that the given evidence is counterfeit and forged, they will be counted as valid and legal [21]. The interpretation of articles 323 and 324 of the principles of penal judgment indicates that the following conditions should be observed in the records and documentations of the legal executors:

- Firstly, the executor himself should issue and produce the record or document; that is, a junior officer should not produce this report.
- Secondly, the legal executor should have the qualification and eligibility and the legal duty for giving such a record and document.
- Thirdly, the legal executor should not give out the record and document based on doubt and speculations. Instead, he should be able to provide clear and explicit evidence for substantiating the event. For example, if the police officer’s report does mention the registration number of the violating car, the report should not be considered as evidence for giving a sentence and verdict.
- Finally, the given document and evidence should have well-established and expected format and style [22].

As a matter of fact, it should be noted the new principles of penal judgment do not include these articles but in the French legal system, the judge’s knowledge is regarded as an argumentum with the above-mentioned four requirements. The records and documents of legal executors put the burden on the accused person. That is, at the presence of such records and documents, the accused person will bear the burden of providing and substantiating evidence for his innocence. Among these records and documents, the records and documents of the officers of the ministry of road, the rangers’ reports, the records of municipality officers with respect to the violation of the urban principles and modernization principles, tax officers’ records based on the amount of the income of tax payers, customs officials, the reports of fish hunting officers and environmentalist’s records are important and are taken into consideration. Also, in some cases, the officers’ reports should be widespread and prevalent so that one can refer to them and rely on them. In other words, these reports should be verifiable by the common and general news and information even though they can be useful by themselves for the judge’s knowledge.

In France, with regard to certain violations of the laws, the legislator has limited the number and types of the arguments and evidences. For example, regarding the crime of persuading and provoking someone else to commit a crime such as theft, looting, murder and arson, article 2 of the law of July 28, 1894 stipulates that if a person accuses someone for an alleged crime but the set of signs and effects cannot verify the allegation, hence, he cannot be convicted for the crime. That is to say, one person’s statement and announcement, even though it increases the judge’s knowledge, is not adequate for substantiating the conviction. Also, in Iranian legal system, according to article 15 of the election law of the country passed in 1994, giving a verdict about the election of...
people with general and typical characteristics depends upon the vote of the majority of the members. Therefore, regarding Hadd [penal punishment], one-sided announcement of a person about the committal of adultery does not lead to giving a sentence and verdict.

C. Necessity for respecting and adhering to legal evidences

The third exception to the principle of the judge’s knowledge is that the judge should always respect all the legal evidences and arguments such as legitimate evidences and confessions which are embodied in the civil laws. As a result, regarding a criminal lawsuit which also has some civil aspects, the judge should not violate the regulations of legal evidences and arguments embodied in the civil laws; instead, he should rely on those arguments and evidences to substantiate the lawsuit [23].

The Iranian trial regulations have a mixed system and organization which accept and acknowledge the judge’s knowledge. However, the legal evidences and arguments are regarded as the major instrument to obtain conscience and consentment. Article 324 of the old regulations of the Iranian criminal trial can be considered as the best argument against the system of the judge’s knowledge. Also, in French penal codes, although different types of evidences and arguments are acknowledged and the judge’s freedom of choice in the evaluation of them is respected and recognized [24], this freedom is not absolute and unconditional; that is, the judge’s freedom in accepting and evaluating different evidences and arguments is limited by the validity and legitimacy of each kind of evidence. In cases the judge’s knowledge has argumentum, it should be consistent and congruent with the circumstances.

5.3. Conditions and requirements for following the judge’s knowledge:

As mentioned earlier in the article, the Islamic jurisprudents do not consider any limitations for the judge’s knowledge and regard it as an absolute argumentum and authority. Notwithstanding the argumentum of the judge’s knowledge, it should be noted that this theoretical belief is not tantamount to an unconditional and unquestionable freedom. That is, the judge cannot immediately give a sentence whenever he acquires knowledge for something according to his own acknowledgment and recognition. Despite the saying that the scholars and intellectuals are the Prophet’s trustworthy and reliable substitutes, they might fail to avoid evil temptations and give in to them. Numerous cases in the disciplinary tribunals, courts of judgment can acknowledge it. Thus preventive tools and devices should be predicted and utilized to inhibit and stop such violations in the execution of the laws. Since the number of highly knowledgeable and perfectly qualified judges is disappointingly low, the ministry of justice has to employ authorized judges. Indeed, giving unlimited and unconditional option and course of action to the judge can result in widespread corruption; as a result, while the argumentum of the judge’s knowledge is respected and acknowledged, the judge’s reliance and reference to his knowledge should be allowed under certain conditions and requirements and unless these conditions are met, the judge should not be allowed to apply his knowledge. These conditions are summarized under three categories:

5.3.1. Requirement One: The judge’s knowledge should be acquired through typical and regular ways:

The judge’s verdict should be based on the type of knowledge which is acquired through established and regular ways and it should be obtained by valid evaluation. This requirement is very significant for the judge’s knowledge since the judge’s verdict will be further evaluated by other judges at higher authorities. If a judge acquires the required knowledge through regular ways but he does not apply it in his verdict, he will be regarded as corrupt and libertine. However, if the knowledge was acquired through regular ways, hence, the verdict derived from that knowledge cannot be nullified and invalidated by higher authorities. On the contrary, the verdict derived from a knowledge which was acquired through wrong ways should be nullified and invalidated by other judges at higher authorities. Article 120 of the Islamic penal code has stipulated that the judge is allowed to call for his knowledge which was obtained in regular and typical ways.

The regular and typical methods and ways of acquiring knowledge includes: the examination of the location, rebuilding and recreation of the setting of the crime by him or others and the experts’ comments. These methods of knowledge acquisition can be divided into two general types: the personal methods of obtaining knowledge and the method in which the intervention of someone else leads to the collection of knowledge for him.

The judge’s knowledge can be collected through his observations and his immediate attendance at the location of crime and likewise it can be acquired by investigating and detecting the accused person’s house and noticing the marks, indications and tools of crime such as gun, knife and body investigation, the dissection of the stain’s corpse, the observation of a threatening letter, a disrespectful and irreverent letter, a counterfeit document and other tools which might have been used for committing the crime. Indeed, in obvious and observable crimes, the judge together with his recorders, archivists and secretaries should ask for the prosecuting attorney to investigate and examine the location of crime. The judge’s examination of the location should be accompanied with the accused person’s contradictory attendance. In Iranian laws, a specific time has not been determined for the judge’s examination of the location and there is no legal prohibition for this. However, according to the French laws, only in case there is a need for the investigation of the house and
obvious and probable suspicions and evidences make the underlying documents for his knowledge. These mention the reference and origin of his knowledge if he applies and uses it for giving a sentence. In general, the for the acquisition of his knowledge. Also, article 105 of Islamic penal codes has stipulated that the judge should for the judge’s knowledge. The second important requirement for the judge’s knowledge is that he should mention the basis and origin 5.3.2. Requirement two: The origin for the judge’s knowledge should be stated: The second important requirement for the judge’s knowledge is that he should mention the basis and origin for the acquisition of his knowledge. Also, article 105 of Islamic penal codes has stipulated that the judge should mention the reference and origin of his knowledge if he applies and uses it for giving a sentence. In general, the obvious and probable suspicions and evidences make the underlying documents for his knowledge. These
probable suspicions and evidences might be obtained through the following ways: the expert’s comments and views, research about the location and place, investigation and detection of the place, fair and proper news [in cases numerous witnesses are required], confession to less than the assigned amount or boundary and confession to the investigating judge. Therefore, the judge cannot easily ignore and neglect the evidences mentioned by both sides of a lawsuit by just claiming that their defenses are disorganized and unjustifiable. Regrettfully, in some courts, especially in Courts of Appeals, nothing is mentioned about the type of announcements and remarks of the both sides of a lawsuit. As a matter of fact, the judge is required to pay attention to the type of a person’s announcements and remarks and then he should reject it rationally or substantiate it. It should be noted that the experts’ remarks and comments are not considered as testimonies but their views and comments make the situation clear since the experts guess and speculate the reality but witnesses announces the truth; he says that “I saw that the man put the poison in the fish ponds. However, it is after the so matology of the dead fish that the expert will express his comment, namely, the fish died because of the poisons or that the kind of poison used for the fish is the same as the one used for the expulsion of the rats. In other words, it can be argued that the expert’s comments are not directly used as the underlying document for the judge’s verdict but if his comments lead to the acquisition of knowledge for the judge, it must be certainly used and mentioned as effective data collecting evidence in the judge’s verdict.

The statement of the underlying document for the judge’s knowledge has another significant effect and outcome; that is, at the higher phases of judgment and trial, it can provide the opportunity and possibility for the later examination of the accuracy of the given verdict since the earlier investigating judge will not be able to follow each process of the case and provide explanation for the earlier details. Therefore, the possibility of examining the details of the respective case can only be possible by studying the dossier and the documents and details which have been attached to it. Furthermore, this procedure can prove the judge’s innocence against the accusation of jobbery and corruption and will also protect his given verdict against criticisms and flaws. Finally, it should be reiterated that not mentioning the origin of knowledge is regarded as a disciplinary violation.

5.3.3. Requirement three: The related document for the origin of the judge’s knowledge should be included in the dossier:

As it was mentioned in the judge’s methods of intervention in topical matters [27], the origin of the knowledge should be included in the documents of the dossier as one of the constitutive elements. If a document can create some knowledge for the judge but it is not included in the dossier, then, using the required procedures, the judge asks the sides to attach the document to the dossier as the constitutive elements of it. As long as the document is regarded as an element of the dossier, it can be referred to by the judge. Obviously, by studying the different parts of the dossier, one can notice the presence or absence of a particular element of the dossier.

In case the judge uses his knowledge for giving his verdict but assumes that there is no need to mention the origin of his knowledge, especially in case of the trials which are not aboveboard and obvious, he will be prone to the accusations of bribery and injustice. Opposite of what was stated, the judge ought to mention the origins of his knowledge so as to stay away from allegations of corruption, bribery, misconduct etc. The requirement for judicial security and the prevention of oppression and absolutism in judgment necessitate the judge to restrict himself only to those evidences and reasons for which there are available documents in the dossier.

5.3.4. Requirement four: The document of the judge’s knowledge should be exposed to both sides of a lawsuit:

In case the judge wishes to obtain knowledge by means of a special document, he should absolutely expose the document to both sides of the lawsuit. The proceedings of a trial should be so that every aspect of the constitutive elements of the trial can be challenged and questioned. The challengeability and questionability of the trial [an assumption of civil lawsuits] or, in other words, the respect and reverence for the accused person’s right of defense [an assumption in penal lawsuits] is considered to be the legitimacy criterion for the judicial verdicts; probably, this is the most critical principle and maxim in the set of laws regarding the course of action and procedures of judgment.

Regrettfully, in Islamic jurisprudence and testimonies, only general statements and principles have been mentioned about the necessity of observing and respecting justice in judgment[28] which is probably due to the simpleness and ease of judgment and lack of complexity in judgment at the initial eras of Islamic history. In contrast, since the principles and laws of judgment and trial have become much more complicated and confusing in modern times, it is increasingly essential to clarify the required instances for observing justice.

The principle of challengeability and questionability of a trial stipulates that all the defenses and claims of each side should be given to the opposite side at the appropriate and time. The judge should observe the principle of challengeability of a lawsuit not only in his own demeanor and conduct but also he should ask both sides to stick to it in their mutual relations [29]. The sides of a lawsuit should be aware that the kind of arguments and evidences which can be considered as the underlying documents for his verdict and hence they would not be deprived of the opportunity for an effective defense and convincing arguments. As a result, the
judge is not allowed to immediately give his verdict only based on the experts’ views and comments without listening to both sides’ statements and remarks even though the experts’ comments have created some knowledge for him.

6. Conclusion:
In this paper, the author acknowledged the argumentum and authority of the judge’s knowledge for qualifying the rationality of evidences with regard to civil affairs and also the significance of that knowledge as the basis of verdicts in penal cases. The judge’s knowledge, as it was discussed, is regarded as a strong, reliable and independent reasoning and argument for substantiating any kind of claim including both the right of God and the right of people. It was also argued in the paper that unconditional and unquestionable reference to and application of the judge’s knowledge is prohibited and only in certain cases is it regarded as having argumentum and authority. In particular, making reference to judge’s knowledge should depend upon some requirements such as the typicality and acceptability of the underlying documents of the dossier, the inclusion of the underlying document in the dossier for the judge’s knowledge, mentioning the document in giving the verdict and eventually observing the highly important principle of the challengability and questionability of the judgment.

REFERENCES
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