

Solutions to Remove Interferences and Supervisions Inconsistent with the Independence of the Legal Profession in Light of International Mechanisms and the French Legal System

Ali Akbar. Shahnazari Karbasoraei¹, Valiollah. Ansari^{2*}, Azizollah. Fazli³

¹ PhD student, Department of Law, South Tehran Branch, Islamic Azad University, Tehran, Iran

² Professor, Department of Law, South Tehran Branch, Islamic Azad University, Tehran, Iran

³ Assistant Professor, Department of Law, South Tehran Branch, Islamic Azad University, Tehran, Iran

* Corresponding author email address: drvaliansari@gmail.com

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This article examines the challenges and interferences facing the independence of the legal profession in Iran and presents solutions to strengthen it through a comparative approach to the French legal system and international mechanisms. The results of this research, which has been conducted using an analytical-descriptive method and document-based data collection, show that the independence of the legal profession, as a fundamental element in ensuring fair trial, faces numerous obstacles in Iran in both legislative and non-legislative areas. Ambiguities and contradictions in related laws, interference of state institutions in managing the Bar Association, lack of clear criteria for entry into the profession, sudden managerial decisions, improper interaction between the judiciary and lawyers, professional discrimination, and lack of job security are among these challenges. In contrast, the French legal system offers an efficient model by emphasizing the self-management of the Bar Association, the independence of the lawyer in defense, and strong protective laws. From a global perspective, international organizations such as the United Nations and international bar associations play an important role in overseeing and supporting the independence of lawyers worldwide. Adhering to their regulations and increasing interaction with them could be a significant step in this regard. Therefore, solutions such as: reforming laws and regulations, strengthening the independence of the Bar Association, ensuring job security for lawyers, improving interaction between the judiciary and lawyers, raising public awareness, and utilizing international experiences to improve the legal profession in Iran, will ensure the reduction of inconsistent interferences.

Keywords: *Legal profession, independence of the legal profession, supervision and interference in lawyers' duties, international organizations, French legal system.*

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1. Introduction

Undoubtedly, judges, prosecutors, and lawyers are interconnected, forming a network essential for the establishment of an effective judicial system, which relies on the coordinated and effective activities of these groups. The effective performance of these three entities requires their independence and freedom in carrying out

their functions. However, the concept of independence for each of these professions has its own specific nature, which consequently demands certain particular conditions.

Today, many experts believe that the establishment of Bar Associations and the emphasis on their independence largely serve to guarantee the independence of lawyers, while organized and



coordinated activities of lawyers within a specific institution enhance their ability to defend their rights and interests. In other words, the independence of the Bar Association is the guarantor of the lawyer's independence, and the purpose of its formation is to ensure the lawyer's autonomy. It should be noted, however, that emphasizing the independence of the Bar Association does not mean that legal professional bodies should become isolated, with no oversight over their activities. Many of the Bar Association's competencies are related to governance and typically fall under the jurisdiction of governmental powers. Therefore, the quasi-legislative and quasi-judicial competencies of these institutions justify the necessity of state intervention and oversight in organizing and coordinating issues related to lawyers (Kabakani, 2020). Comparative studies also show that in most countries, government intervention in Bar Association affairs is an accepted practice, with differences primarily regarding the extent and manner of intervention. Accordingly, unlike the Iranian legal system, in France's legal system, the Ministry of Justice and the judiciary do not have extensive and fundamental guardianship or supervisory duties over the legal profession or lawyers. Therefore, the role of these organizations is specific and limited by law (Mousa Zadeh, 2008).

Thus, based on the above points, it is unrealistic to expect that the legal profession and the government in Iran (including the judiciary and the Ministry of Justice) will have no interaction. It is equally incorrect to claim that the government has no oversight over the Bar Association. Both of these entities, as specialized professions within the justice system, must adhere to certain models and guidelines. All of this must be defined within a framework in which the supervisory and guardianship system is both correct and does not compromise independence. At the same time, judicial oversight should not equate to interference with the independence of the legal profession and lawyers. A clear distinction should be made between "interference" and "supervision" and between "compatible" and "incompatible" interference, and appropriate measures should be taken to prevent particularly incompatible interference.

Therefore, this study aims to address these issues through an analytical-descriptive method, with data collected from documentary sources. The paper will

discuss several key topics, including challenges and issues in the legislative and non-legislative fields, legal protections and support for lawyers, the roles and responsibilities of the Bar Association, and the necessary positive and negative prerequisites for ensuring the independence of lawyers and the Bar Association in Iran, in light of the French legal system.

2. Challenges and Issues in the Legislative Field

Many experts believe that the Bar Association of Iran is currently facing its most difficult days. What has transpired over the past three years (since 2021) for the legal profession goes beyond the highs and lows the institution has encountered throughout its eighty-year history. Much of the Bar Association's time and energy has been spent dealing with these challenges and the extended controversies that have emerged.

Although the independence of the Bar Association is accepted as a legal principle in doctrine, the Constitution, international law, and in the customs and practices of civilized countries, unfortunately, in Iran, there are significant issues in the areas of ordinary legislative law and judicial customs. In this regard, ambiguous and sometimes contradictory legislation has posed a threat to the independence of the Bar Association and the concept of an independent lawyer. In Iran, there is often a tendency to regard the lawyer as an outsider or unrelated to the proceedings. In addition to problematic laws, such as the clause under Article 122 of the Code of Criminal Procedure, which conditions the lawyer's presence during investigations on court permission, some judicial officers and law enforcement officials view the lawyer as an obstruction. However, the lawyer is neither an obstruction, nor a stranger, nor an outsider. As stated earlier, the lawyer is the "second wing of the angel of justice," and defending the independence of the Bar Association is defending justice and rights. The first step in this defense is to eliminate ambiguous and contradictory laws (Hekmat Ravan, 2008).

Some experts believe that the calls for limiting the legal profession have become more serious in recent times, from the refusal to recognize this group during the events of 2022 and their inability to access their clients' case files, to recent developments where government-oriented approaches, along with various bills and amendments, attempt to impose restrictions on the independence of the Bar Association. Currently,

according to the law, Bar Associations must issue and revoke licenses through the national portal of the Ministry of Economy's licensing system. This means that the institution must fall under the Ministry of Economy and Finance. Opponents of this development argue that it threatens the independence of the Bar Association and undermines the country's legal system, reducing it to a mere part of the economic system (Kiani, 2023). Given the breadth of existing challenges, the main aspects of these issues will be examined further.

2.1. *The Creation of Ambiguous Laws and Regulations*

The creation of laws lacking clear criteria is one of the key issues that leads to objections and multiple challenges. For example, according to Article 48 of the Code of Criminal Procedure, approved in 2013, when an individual is placed under surveillance, they have the right to request the presence of a lawyer. In accordance with Article 190 of the same law, this right must be communicated to the accused before the investigation begins. Failure to inform the accused of this right in the new law has no legal consequences, and this can be considered a significant infringement on the rights and interests of the accused (Javid & Shah Moradi, 2017). From a legislative perspective, there are also other significant challenges based on ambiguous legal foundations, which will be explained below.

A. The Clause of Article 48 of the Code of Criminal Procedure

The Code of Criminal Procedure is one of the procedural laws that defines the process for handling criminal cases. One of its important articles, Article 48, is considered innovative in its field and a step toward securing the rights of the accused. According to the text of Article 48 of the Code of Criminal Procedure: "Upon the initiation of surveillance, the accused has the right to request the presence of a lawyer. The lawyer must meet with the individual under surveillance while maintaining the confidentiality of investigations and negotiations, and the lawyer may provide written observations for inclusion in the case file at the end of a meeting with the accused, which should not exceed one hour."

This article also includes a clause that stipulates: "In cases related to national security offenses or organized crimes, for which penalties are governed by Article 302 of this law, both parties to the case must select their lawyer(s) from a list of officially recognized lawyers

approved by the Head of the Judiciary during the pre-trial phase. The names of the approved lawyers will be announced by the Head of the Judiciary." Thus, while the accused may hire a lawyer upon being placed under surveillance, if the individual is accused of national security offenses, organized crimes, or crimes under Article 302, this right is restricted, requiring the parties to select their lawyer(s) from an approved list of licensed attorneys during the pre-trial phase.

B. Article 128 of the Code of Criminal Procedure

Another law that disregards the independence of the legal profession is the clause of Article 128 of the Code of Criminal Procedure, which conditions the presence of the defense lawyer during the investigation on the approval of the judge. Article 128 of the Code of Criminal Procedure, approved in 1999, states: "The accused may have one lawyer present with them. The defense lawyer may, without interfering in the investigation, submit any statements after the investigation ends that are necessary for discovering the truth and defending the accused or for enforcing the law. The lawyer's statements will be reflected in the minutes." The clause of this article states: "In cases where the subject matter is confidential, or the judge deems that the presence of individuals other than the accused may result in corruption, and also in cases involving national security crimes, the lawyer's presence during the investigation will require the approval of the court."

As a result of this provision, there has been a prevailing mindset in the prosecutor's office that the presence of a defense lawyer during the investigative phase is entirely subject to the decision and opinion of the investigator or prosecutor. In practice, it has often been observed that during the preliminary investigation, the judge overseeing the case has denied the defense lawyer's access, justifying this decision by referencing Article 128.

C. Violation of Independence in the Management of the Bar Association and Judicial Review No. 270 of the Supreme Administrative Court

Article 22 of the Law on the Independence of the Bar Association correctly emphasizes the importance of independence, stating: "The Bar Association, in accordance with the provisions of this law, will organize the internal regulations related to the Bar's affairs, such as elections, the procedures for addressing violations, the types of violations and their penalties, as well as the advancement, training, and licensing of lawyers, within

two months of the approval of this law. These regulations will be implemented after receiving the approval of the Minister of Justice."

The Bar Association has also previously developed the internal division of work and the duties of the Board of Directors of the Tehran Bar Association on November 8, 1965, as well as the regulations concerning the selection of the board, the selection of the management board, and the conditions for issuing and revoking lawyer licenses, training, promotions, and disciplinary procedures. These regulations were approved by the Minister of Justice in 1955. However, despite the nature of these regulations, the Supreme Administrative Court, in its Judicial Review Decision No. 270, dated February 12, 2002, invalidated Section 8 of Article 31 of the Bar Association's regulations, despite a prior ruling on the same regulations in Judicial Review Decision No. 66-27/2/2004. This ruling is not acceptable for several reasons. It is important to note that the approval of the Minister of Justice does not transform the Bar Association's regulations into administrative acts; in fact, the Minister of Justice did not create a legal rule that would require it to be examined for compliance with the law or Sharia. Therefore, this procedure cannot be deemed correct merely because it has received the Minister's approval (Mohseni & Ghamami, 2015).

2.2. *The Creation of Laws and Regulations Lacking Clear Criteria*

A review of current laws and regulations shows that some of these provisions practically lead to the infringement of individuals' rights, the emergence of injustice, and the threat to the independence of lawyers, among other issues. Some of these laws are entirely lacking in clear legal criteria, which are discussed below.

A. The Introduction of Paragraph (D) of Article 8 of the Law on the Independence of the Bar Association Concerning the Admission of Certain Individuals to the Legal Profession Without an Examination

Law graduates are often concerned about the lawyer's examination. However, according to the amended Article 8 of the Law on the Independence of the Bar Association, passed in 1994, certain groups of individuals are granted a law license without taking the exam. The Bar Associations are required to grant law licenses to the following four groups without an exam:

- Experienced judges (with ten consecutive years or fifteen non-consecutive years of judicial service and at least five years of leadership or membership in a court, without losing their judicial qualifications);
- Individuals with a Bachelor's degree and judicial experience (with a law degree and five years of judicial service, without losing their judicial qualifications);
- Members of parliament with judicial experience (having completed a full term in parliament, holding a law degree or a certificate of completing advanced studies from Qom Seminary, and having five years of judicial experience in courts);
- Individuals with a Bachelor's degree and legal experience in government institutions (holding a law degree or a certificate of completing advanced studies from Qom Seminary, with at least five years of continuous or ten years of non-continuous legal service in government positions, affiliated entities, or military forces, and having retired after thirty years of service, without age restrictions and after completing half of the internship period).

Therefore, in accordance with the explicit provisions of the law, the Bar Associations have no way to refuse granting a law license to these individuals. If they are refused, they may file a complaint with the High Disciplinary Court for Judges, requesting that the Board of Directors of the Bar Association be compelled to issue the law license.

B. The Law on the Quality of Obtaining a Law License

The independence of the Bar Association includes the review of the conditions for entering the legal profession, training interns, and improving the ongoing education of lawyers. This type of independence is somewhat limited by Clause 1 of Article 4 of the Law on the Quality of Obtaining a Law License, passed in 1997, which requires at least one examination per year and gives the responsibility for determining the number of trainees to a commission consisting of the head of the provincial judiciary, the head of the First Branch of the Revolutionary Court, and the head of the respective Bar Association. Thus, with the limitation of this type of independence in the country, the determination of the eligibility of candidates for this committee is left to the

High Disciplinary Court for Judges (Mohseni & Ghamami, 2015). However, despite several sessions, some reform opinions have been expressed, but unfortunately, the unresolved issues still persist, and no amendments have been implemented by the Judiciary.

C. The Approval of the Law on Facilitating the Issuance of Business Licenses and Beyond, the Implementation of this Law

Currently, Bar Associations must issue and revoke law licenses through the National Licensing Portal of the Ministry of Economic Affairs and Finance. This action was confirmed and approved in a five-article plan by the Guardian Council on April 19, 2022, during which some provisions of the law implementing the general policies of Article 44 of the Constitution, the Law on Improving the Business Environment, the Law on the Activity of Official Expert Associations, and the Law on the Quality of Obtaining a Law License were seriously reviewed. According to the designers and supporters of the proposal, this plan seeks to remove administrative obstacles for business applicants and simplify the process of issuing necessary licenses to help improve employment, expand businesses, and promote productive economic growth.

However, many lawyers and legal scholars opposing this plan believe that members of the Iranian Parliament approved the plan without consulting experts in the field, and that this law may cause numerous problems.

D. Article 187 of the Third Development Plan Law, Approved in 2000

The independence of the Bar Association also includes important aspects such as reviewing the conditions for entering the legal profession, training interns, and improving the ongoing education of lawyers. Article 187 of the Third Economic, Social, and Cultural Development Plan of the Islamic Republic of Iran, approved on April 6, 2000, granted the Judiciary the authority to approve the qualifications of law graduates for establishing legal consultation institutions, allowing these consultants to represent clients in courts, government organizations, and non-governmental institutions.

However, following the expiration of Article 187 with the conclusion of the Third Development Plan, and due to the lack of a budget allocation, the Judiciary and its associated Center for Legal Consultants no longer have a legitimate legal basis. The corresponding regulations are

now considered obsolete and legally invalid for the following reasons (Mousavi, 2019):

- **Temporary Nature of Development Programs:** Development programs are temporary in nature, and their provisions automatically expire at the end of their validity period unless extended in subsequent programs. Article 187 is no exception.
- **Non-Renewal in Subsequent Programs:** In the Fourth, Fifth, and Sixth Development Programs, the legislators did not extend Article 187, indicating their intention to end this alternative pathway for obtaining a law license.
- **Unsuccessful Attempts to Make the Article Permanent:** There were attempts to turn Article 187 into a permanent law, but these efforts were unsuccessful, further reinforcing the temporary nature of this provision.
- **Budget Cuts:** The necessary budget for implementing Article 187 has been cut by the parliament, signaling a lack of support for continuing the implementation of this article.

3. Challenges and Non-Legislative Issues

Apart from the legislative challenges discussed in previous sections, there are various other challenges that fall outside the scope of bills or laws passed by the government or the judiciary. These issues are also significant barriers and challenges in this area, and they will be examined below.

3.1. Management Decisions

The Code of Criminal Procedure, enacted in 2015, aimed at strengthening the rights of defendants. This law allowed lawyers to be present alongside defendants during the initial stages of investigations. However, in a strange amendment before the law was fully implemented, this right was revoked from the defendants. This change means that, in many cases, defendants are unable to benefit from legal advice during the early stages of investigations, which is in conflict with fundamental human rights and the right to defense. This amendment also reflects weaknesses in management and decision-making processes within the legislative domain, as a law that had not yet been enforced was subjected to significant changes without adequate expert

reviews or attention to legal professionals' opinions. This practice has raised concerns regarding the weakening of defendants' rights and the overall quality of criminal justice (Mortazavi, 2020).

3.2. *Lack of Interaction Between the Judiciary and Lawyers*

A major problem in the interaction between the judiciary and lawyers is one of the fundamental challenges within the Iranian judicial system. Some judges harbor negative views towards lawyers and perceive them as attempting to prolong litigation, which has led to a restriction of defendants' right to defense. This problem was also reflected in the new Code of Criminal Procedure; despite the enactment of a law that guaranteed the right of a lawyer to be present during all stages of preliminary investigations, an amendment was introduced that deprived defendants of this right. These sudden and unsubstantiated changes demonstrate weaknesses in management and decision-making within the legislative process. This approach not only harms the rights of defendants but also undermines the overall quality of judicial proceedings. To improve this situation, the perception of judges towards lawyers must change, and greater cooperation and interaction should be fostered between these two groups (Najafi Tavana, 2006).

3.3. *Discriminatory Practices and Creation of Rent-Seeking*

One of the serious challenges in the judicial system is the restrictions placed on defendants' right to choose their lawyer. These restrictions are primarily enforced through Clause 1 of Article 48 of the Code of Criminal Procedure and special permits issued by the head of the Judiciary. According to these regulations, in some cases, defendants are forced to select a lawyer from a restricted list designated by the Judiciary. This not only violates the principle of equality before the law and the right to defense but also damages the public's trust in the judicial system. Moreover, limiting the right to choose a lawyer harms the position of lawyers as an independent profession with a special social status (Divsalar & Najafi Tavana, 2021). The use of special permits to impose such restrictions is also contrary to the principle of rule of law and indicates a failure to rely on legal and expert methods to amend laws. As a result, these limitations not only harm the rights of defendants but also weaken the

overall quality of judicial proceedings. To improve this situation, the right to choose a lawyer must be respected as a fundamental right, and illegal restrictions should be removed. Additionally, instead of relying on special permits, legal and expert methods should be employed to amend laws and improve the functioning of the judiciary.

3.4. *Lack of Job Security*

A significant challenge in the legal profession is the lack of adequate job security. Lawyers defending their clients in court often face feelings of threat and anxiety. This concern arises from the possibility that they may lose their opportunity to defend their clients or face prosecution for their statements. This situation not only harms lawyers but also negatively impacts the process of litigation and the defendants' right to defense. Guaranteeing job security for lawyers is one of the fundamental principles of achieving criminal justice (Divsalar & Najafi Tavana, 2021).

From the perspective of potential threats or dangers, it can be said that generally, the parties involved in the case—whether the client or their family, stakeholders, individuals or legal entities with conflicting interests, political and judicial authorities, tribes and clans, political parties, and other litigants—are all potential sources of threat or danger. Motivations such as political aims, business interests, misunderstandings, revenge, personal settlement of scores, forcing a failure in the case, coercion to resign from the case or from a professional position, forced compliance with orders, and similar factors could be involved.

In many countries around the world, lawyers are granted certain immunities. For example, in France, based on Article 31 of the Law of July 29, 1881, lawyers are immune from any interference or prosecution for their speeches during legal proceedings, although this immunity does not extend to incitement to commit a crime. Similarly, in Lebanon, the law mandates that the prosecution of a lawyer, in cases related to their legal duties, can only proceed with a decision from the Bar Association (Zeraat, 2004). However, Iranian laws lack such explicit provisions, and Article 20 of the Law on the Independence of the Bar Association only provides protection for lawyers while performing their duties but does not directly mention their immunity. Nevertheless, Clause 3 of the Expediency Council's resolution on

lawyer selection partially addresses this issue. According to this resolution, lawyers in the defense position are entitled to respect and protections afforded to judicial personnel. However, this provision is not as comprehensive as the laws in some other countries, and ambiguities still exist regarding the scope of this immunity (Tavasoli Nayini, 2006).

3.5. *Legal Measures and Support for Lawyers and the Duties of Bar Associations*

Given the importance of the legal profession and, consequently, the role of Bar Associations, it is necessary for certain protections to be provided in this regard. These supports can take various forms, such as: following up on matters in legal authorities, contacting families and arranging necessary assistance, accepting legal representation, consulting with relevant authorities, confronting danger-inducing factors, informing the public, brainstorming, and collaboration. However, it is important to note that, with an emphasis on the rule of law, measures in this area should be pursued more seriously and strengthened (Najafi Tavana, 2006).

4. **Essential Requirements for Ensuring the Independence of Lawyers and the Bar Association of Iran in Light of the French Legal System**

In Iran, the concept of "independence of lawyers" is primarily interpreted in light of Article 1 of the Law on the Independence of the Bar Association, enacted on 23 February 1955, as the independence of the "Bar Association institution" from political power. This independence is mainly understood as the absence of direct governmental interference in the internal affairs of the Bar Association and the freedom of lawyers to defend their clients. However, there is no deeper understanding of the various dimensions of lawyer independence, and often, emphasis is placed on its negative aspect, i.e., the non-interference of the government (Vaezi, 2011).

On the other hand, in Iranian law, the independence of lawyers belonging to independent bar associations and those affiliated with the judiciary is not addressed in a similar manner. Despite the restrictions imposed on the independence of the former group, they remain hopeful of preserving their independence and are subject to the oversight of the Bar Association and the Disciplinary

Court of Lawyers. Only the Disciplinary Court for Judges has the authority to review appeals of decisions issued by the Lawyers' Disciplinary Court, and this is done solely to preserve the dignity of the lawyers. The handling of disciplinary violations of lawyers by the Disciplinary Court is, in a sense, the foundation of the independence of the Bar Association (Matin Daftari, 1952). However, lawyers from the second group are under the supervision of an appointed board mentioned in Article 2 of the Executive Regulation of Article 187 of the Third Development Plan Law, which includes no lawyers as members, and in many of their affairs, including handling violations in both first-instance and appellate stages, they possess unlimited powers (Mohseni & Ghamami, 2015).

Therefore, in light of the challenges present in improving the independence of lawyers in Iran, it is essential to pay more attention to the laws and regulations governing the legal profession in other countries, particularly in advanced countries like France. By studying and analyzing these laws and regulations, we can become familiar with various perspectives on the legal profession and benefit from their successful experiences to improve the state of the legal profession in Iran, implement necessary innovations, and align the profession with social, economic, and technological changes.

4.1. *Positive Requirements*

The right to defense is an inherent and fundamental human right, which, under the influence of civilization and the evolution of specific principles, has led to the establishment of laws that require awareness and understanding of these laws and principles. Therefore, the defense of rights and the pursuit of justice has appeared in the world, followed by the judicial phase. As such, the lawyer not only serves the role of defending and pursuing rights but also functions as a specific assistant and advisor to the judge, guiding them (Sarshar, 1948). Accordingly, in most prominent countries, Bar Associations (and generally, any other professional body) naturally strive for maximum independence from the state. However, the state should aim to go beyond this professional view and work towards ensuring proper access to legal services while maintaining the practical independence of lawyers and their Bar Associations (Tangestani & Moradi Barlian, 2021).

In France, the legal profession is recognized as one that operates under highly professional, regulated, and rigorous laws, with an organizational structure that adheres to specific regulations. The legal framework includes the Law of 1971, the Decree of 1991, and the 2005 amendment, which continue to be in effect in the country. These laws guarantee fundamental principles of the legal profession, such as independence, confidentiality, specialization, and others, ensuring practical and theoretical independence for both lawyers and their Bar Associations.

4.2. Legal Requirements

From a legal perspective, France is one of the countries that has made significant efforts in this area by enacting substantive and procedural laws that align with the independence of the legal profession. France is among the earliest countries to recognize the fundamental right to have a lawyer and emphasize the importance of the lawyer's role in its constitution. The French Constitution obligates the state to recognize the fundamental rights of its citizens so that people can claim these rights and freedoms, and the state is obligated to respect them (Hedavand & Mashhadi, 2010). In France, certain judicial precedents from the Constitutional Council also address the right to defense and the right to have a lawyer. For instance, the decisions of January 20, 1981, and August 11, 1993, highlight the necessity of having a lawyer present during a judicial proceeding. In its decision on April 22, 1997, the Constitutional Council affirmed that the constitutional principle of respecting the right to defense extends even without explicit reference by the legislature to administrative authorities (Vaezi, 2011). The French Law on Advocacy was passed in 1971 and has been amended several times since. This law provides extensive legal protections for the independence of lawyers. Under various provisions, the law grants exclusive rights to practice law to lawyers and permits them to operate freely throughout France, regardless of geographic limitations. Additionally, lawyers can engage in business activities, provided they have sufficient experience. The organizational structure of the Bar Association in France is designed to guarantee the independence and self-management of the institution. In general, the French Law on Advocacy offers legal protections that support the independence of lawyers, allowing them to defend their clients freely and

independently. The law also defines a coherent structure for the Bar Association. According to this law, the Bar Association is a self-managed institution, governed by an executive board elected by lawyers. This board has various duties, including approving internal regulations, issuing licenses for legal practice, overseeing lawyers' activities, and resolving disputes among lawyers. Furthermore, the Bar Association has legal personality, and its president acts as its legal representative. To address specialized matters, the Bar Association may establish subcommittees. Decisions made by the executive board can be appealed in court, and the public prosecutor may intervene in Bar Association affairs (Khani Valizadeh, 2018).

5. International Mechanisms for Monitoring the Right to a Lawyer and Its Independence

The realization of the rule of law and justice in society is not achieved merely by the establishment of legal institutions. Achieving this goal requires both internal and international mechanisms that can be broadly categorized into public and private entities, whose actions and laws are universally recognized by the global and legal community.

In this regard, legal rules and obligations arising from international documents emphasize the necessity of avoiding incompatible interventions and undertaking actions that do not undermine the right of individuals to have a lawyer and the independence of the legal profession. Consequently, legal policymakers must ensure the strengthening of independence and facilitate universal access to this right in all judicial and legal dimensions when making decisions about this right and the institution of law, which fortunately has deep cultural, social, legal, and historical roots. This section will examine the role and operation of key international public and private monitoring bodies in this regard.

A. Public Institutions

- **The United Nations and Its Subordinate Bodies**
- In recent decades, the international human rights system has experienced significant growth. This development began with the adoption of the Universal Declaration of Human Rights and gradually expanded through the creation of numerous international documents, organizations, and mechanisms, forming a

comprehensive legal system. The main goal of this system is to protect human dignity and provide individuals with opportunities for growth and development. The United Nations has played a central role in the formation and expansion of this system, with many international organizations dedicated to human rights being affiliated with it (Sakuchi, 2007).

One of the most important actions taken by the United Nations General Assembly in promoting human rights is the establishment of specific monitoring bodies, including the Human Rights Council, which, as a subsidiary body of the UN Economic and Social Council, addresses issues related to human rights. Regarding the monitoring of the right to legal representation and the necessity of lawyer independence, mechanisms such as the periodic human rights rapporteur and the special rapporteur on human rights have been established. Based on the outcomes of these mechanisms, the Human Rights Council takes decisions regarding the matter (Qarachorloo et al., 2018).

Reports frequently highlight various forms of intervention, including disciplinary punishment (such as dismissal), administrative or economic sanctions, arbitrary detention, legal prosecution of Bar Association leaders and members, the use of negative language against Bar Associations and their members, and false media reports in national and local press, among other forms of intervention (UN High Commissioner for Human Rights, 2023). It is noteworthy that in the reports related to Iran, violations of the fundamental rights of lawyers in defending their clients have been referenced, and this issue has been used as one of the negative points in terms of the principle of lawyer independence against Iran.

- **Regional Commissions and Courts**
- The European Convention on Human Rights, due to its international importance and credibility, is the most significant regional human rights document and is, in some ways, more pragmatic than the Universal Declaration of Human Rights, as it allows individuals to submit complaints directly to its court (Tabatabai Motameni, 2006). Regarding the right to a lawyer, one of the provisions of Article 6 of the European Convention on Human Rights (1950) states: "Everyone charged with a

criminal offense has the right to defend themselves in person or through legal assistance of their own choosing; and if they do not have legal assistance, they shall be given it free of charge if the interests of justice so require." (Yavari, 2014).

Accordingly, the European Court of Human Rights is responsible for overseeing the right of access to a lawyer, particularly when this right is violated within member states. In numerous cases, the Court has emphasized the importance of this right and the independence of lawyers. For example, regarding laws that limit access to a lawyer in emergency situations, the Court has stated that such restrictions must align with the defendant's right to a fair trial. In other words, the right to access a lawyer during the early stages of interrogation is essential to ensure a fair trial, and limiting it without adequate justification is considered a violation of human rights (Jafarzadeh Darabi, 2018). The African Commission on Human and Peoples' Rights has also addressed the issue of access to a lawyer through the interpretation of the African Charter. In a case against the Burundian government, the Commission, relying on the principle of fair trial, ruled that the accused must have access to legal counsel. According to the Commission, the lack of access to a lawyer deprived the defendant of the ability to mount a proper defense, thus violating the principle of presumption of innocence. In other words, the African Commission on Human and Peoples' Rights, through an expansive interpretation of the Charter's provisions, has recognized access to a lawyer as one of the fundamental pillars of a fair trial (Jafarzadeh Darabi, 2018).

B. Specialized Institutions

- **International Bar Association**
- The International Bar Association (IBA), abbreviated as IBA, was first established on 8 July 1927 in Charleroi, Belgium. According to Section 3 of the IBA's Charter, the goal of creating this association is to "promote the fundamental principles of the legal profession worldwide, particularly the principle of independence and the freedom of lawyers, in line with the general interests of those engaged in the judicial system, as outlined in the charters adopted by the IBA, and to defend the material and moral rights of its members while

addressing common issues related to the organization's structure and professional status internationally" (Motamedi, 2003).

Given its goals, the IBA defends the rights and independence of lawyers at the global level. The IBA has condemned the actions of certain governments against human rights lawyers through various statements. For example, together with other international organizations, it condemned the violent actions of the Philippine government against human rights lawyers, human rights violations in Egypt, and the deprivation of a lawyer's rights in Bahrain. In simpler terms, the IBA, as a human rights defender, supports lawyers who are persecuted due to their defense of the rights of others (Motamedi, 2003).

- **International Association of Lawyers**
- The International Bar Association (IBA) was founded in 1946 as a result of the efforts of the North American Bar Associations. The primary purpose of this association was to provide a platform for cooperation and exchange among lawyers and legal institutions globally. Over time, the IBA has become one of the largest and most respected legal organizations in the world. Today, it has more than 80,000 individual members and approximately 190 legal institutions from over 170 countries, including the Iranian Bar Association. The IBA plays a crucial role in promoting legal standards, organizing conferences, publishing specialized journals, and defending the rights of lawyers globally.

In 1990, the IBA adopted crucial regulations titled "Standards of Independence of the Legal Profession." The purpose of these regulations was to emphasize the importance of lawyer independence in ensuring human rights, access to justice, and the rule of law. These regulations serve as a global standard for assessing lawyer independence. The regulations underscore the role of Bar Associations in supporting lawyer independence and their collaboration with governments to promote justice (Motamedi, 2003).

The IBA, through its "Standards of Independence of the Legal Profession," addresses not only the individual independence of lawyers but also the role of Bar Associations in maintaining this independence. These regulations outline key principles, such as: access to a

lawyer, legal services for all, the formation of independent and self-governing Bar Associations, free election of board members, defending the honor, dignity, and independence of lawyers, establishing professional conduct standards, handling disciplinary violations, respecting the rights of detained lawyers, setting fair rules for disciplinary proceedings, and providing the right of appeal for lawyers (Motamedi, 2003).

6. Discussion and Conclusion

This article, aimed at examining the challenges related to the independence of the legal profession in Iran and offering solutions to strengthen it, has been written with a comparative view of the French legal system and international mechanisms. The research findings reveal that the independence of the legal profession in Iran faces multiple challenges in both legislative and non-legislative areas. These challenges impact the performance of lawyers and ultimately lead to the undermining of fair trial processes.

In the legislative domain, ambiguities and contradictions in laws, such as the proviso of Article 48 and Article 128 of the Code of Criminal Procedure, have resulted in arbitrary interpretations and unnecessary restrictions for lawyers. Furthermore, interference in the management of the Bar Association, through instances such as Judgment No. 270 of the Public Board of the Administrative Court of Justice and the obligation of Bar Associations to comply with the National Permit Portal, indicates the involvement of governmental bodies in the internal affairs of the Bar Association, which violates its independence. The existence of laws lacking clear criteria, such as Clause (d) of Article 8 of the Law on the Independence of the Bar Association and the Law on the Acquisition of License Qualifications, raises doubts about the transparency and clarity of criteria for entry into and supervision over this profession. Moreover, reliance on Article 187 of the Third Development Plan for issuing licenses to legal consulting firms by the Judiciary, given the expiration of this provision, lacks legal validity and has led to the creation of parallel institutions, thus weakening the position of the Bar Association.

In the non-legislative domain, sudden managerial decisions and amendments without sufficient expert review indicate weaknesses in management and the legislative process. The inappropriate interaction between the judiciary and lawyers, characterized by the

negative attitude of some judges toward lawyers and a lack of proper understanding of their role, has led to the limitation of defendants' right to defense and a decrease in the quality of trials. Limiting the right to choose a lawyer and forcing the selection from predetermined lists fosters professional discrimination and creates rent-seeking behavior. The absence of job security and the lack of explicit laws regarding the immunity of lawyers expose them to threats and pressure, thus undermining their independence.

In contrast to these challenges, the French legal system offers a coherent and efficient structure, emphasizing the independence of the Bar Association, the lawyer's autonomy in defending their clients, and the presence of strong protective laws. Furthermore, international organizations such as the United Nations, regional courts, and international bar associations play a significant role in monitoring and supporting the independence of lawyers globally. Adhering to their frameworks and laws would be an essential step in preserving the independence of lawyers and Bar Associations.

Therefore, based on these findings, it can be concluded that the independence of the legal profession in Iran requires serious attention to its various aspects. Simply having sufficient supportive laws is not enough; their proper and non-discriminatory implementation, along with changes in attitudes and practices, are also crucial. To strengthen the independence of the legal profession in Iran, the following recommendations are proposed.

Firstly, the reform of laws and regulations related to legal practice should be prioritized. These reforms should include clarifying ambiguities and contradictions in existing laws, formulating comprehensive laws to protect lawyers' independence against any threats or pressures, revising the law on acquiring a law license, and establishing transparent and clear criteria for entering this profession. Moreover, resolutions that conflict with the independence of the Bar Association should be abolished, and reliance on outdated laws should be avoided.

Alongside legal reforms, strengthening the independence of Bar Associations by preventing any interference from governmental bodies in their internal affairs is essential. Empowering Bar Associations to self-regulate professional standards, handle disciplinary matters, and ensure their financial independence is

necessary. Additionally, ensuring job security for lawyers through comprehensive laws protecting them from threats, pressures, and illegal prosecution, and creating effective mechanisms for addressing complaints related to the violation of their rights, is of utmost importance.

In parallel with these measures, fostering constructive interactions between the judiciary and lawyers through joint training programs to increase mutual understanding and the establishment of formal mechanisms for dialogue and consultation between them is crucial. Furthermore, raising public awareness about the importance of the lawyer's role and their independence in ensuring a fair trial through educational programs and public outreach should be pursued.

Finally, leveraging international experiences, especially studying the French legal system and utilizing international monitoring and support mechanisms for lawyers' rights, could provide valuable insights and contribute significantly to further strengthening the independence of the legal profession in Iran. It is clear that the pursuit of these matters requires a serious commitment from the legislative and judicial bodies, as well as from the legal community itself.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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