



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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20 June 2006

### IRN101299.E

Iran: Arrest warrants and other court documents; trial *in absentia* in criminal cases; punishment for persons charged with helping anti-revolutionaries; procedure when someone acts as surety; which competent authority or court has legal jurisdiction to issue a death sentence to a convicted criminal; circumstances under which a "warning to seal" document is issued and the consequences for the person named in the document; circumstances under which a private home is "sealed"; whether it is pursuant to a court order and, if so, legal documents issued to the person concerned or availability of these documents through legal representatives; impact of a sealing on the resident (2004 - 2006)  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

### **Court documents and arrest warrants; surety; death sentences; trial in absentia**

Correspondence with Sabi and Associates, a law firm specializing in Iranian law, located in London, England, yielded the following information:

[Court documents and arrest warrants]

In most circumstances the office of the court issues court documents, such as summons and other relevant notices. Arrest warrants have to be signed by the judge. Also, any judgment of the court resulting in the conviction of the accused should also be signed by the judge himself. Otherwise (unless there is a specific provision), the court officer (normally an unqualified clerk) will sign the notices. The notices are served through the service department of the Ministry of Justice and through a bailiff. The bailiff is employed by the government and there are no private process servers, whether in commercial or criminal proceedings. Even in commercial cases, all the documentation and notices have to be served through the service department of the Ministry of Justice.

A warrant for arrest should be served on the accused at his last known address. If the address is unknown or the accused cannot be found at his last known address, then the proper service would take place through publication of the warrant in a widely circulated newspaper or a local newspaper where the accused resides. The members of the family cannot be served instead of the accused unless they acknowledge that they are aware of the whereabouts of the accused and they will undertake to deliver the notice/summons to the accused. In principal, in criminal cases, the substituted service through members of the family is not acceptable. If the accused cannot be found, the

arrest warrant would be passed on to law enforcement officers to arrest the accused whenever and wherever he is found.

#### [Surety]

There are different methods of obtaining a bail. Bail can be obtained through a surety, through providing security or through a cash deposit. Under Islamic law, for minor offences, the accused can be released on his own bail.

In the case of surety, the person standing a surety has to appear before the office of the court and sign a formal declaration that he will be personally responsible for delivering the accused to the court whenever the court summons him to do so. In other cases, arrangements will be made through the office of the court with a special fund in the Ministry of Justice to provide a deposit of cash or bank guarantee. In the case of providing as security a title deed or the like, the original document of ownership should be deposited with the office of the court and no transaction can be carried out in respect of the property that has been offered as security.

[In cases where a] person who has been bailed [through a surety] does not appear on the due date ... the surety will be summoned to deliver the accused, failing which the cash amount required for bail will be seized from his assets. In other cases, the property or the asset that has been pledged to the court will be confiscated.

#### [Death sentences]

The competent authority to issue a death sentence is the public court (which now includes revolutionary courts) within whose jurisdiction the offence has occurred. Generally, the decisions of the public courts are final, except in cases where, among others, [the] decisions or convictions [are for] crimes which carry capital punishment.

#### [Trial in absentia]

In accordance with Article 217 of the Criminal Procedure Code, in cases involving crimes of public order (as opposed to religious crimes), if the accused and/or his representative is absent from the entire proceedings, then the court can issue its sentence in absentia, which of course will be subject to appeal once it is properly served on the accused. There is no restriction as to the type of sentence that may be issued and therefore it includes death sentences issued in absentia. There is no express provision in this respect, but Note 2 of ... Article 217 would only allow the court to proceed in the absence of the accused if the court is of the opinion that there is no basis for the conviction of the accused and arriving at that decision does not require interrogation of the accused. Otherwise, the presence of the accused is necessary for completion of the proceedings and issuance of the final verdict (4 May 2006).

### **Persons charged with helping anti-revolutionaries**

According to Iran's Islamic Penal Code, the following are among the penalties for "crimes against internal and external security of the country":

Article 498: Anyone ... who forms or administers a faction, association or branch of an association of more than two people in or outside the country ... with the intention of disrupting the country's security ... shall be sentenced to a term of two to ten years in prison.

Article 499: Anyone who enters into membership with one of the factions or associations or the branches of associations mentioned in Article 498 above shall be sentenced to an imprisonment of three to five years unless it is proved that the perpetrator has had no knowledge about the intentions of said group.

Article 500: Anyone who ... [engages in] propaganda ... against the system of [Iran] or in favour of groups and organizations opposed to the system shall be sentenced to an imprisonment of three months to one full year (Iran 22 May 1996).

Examples of sentences handed down in 2005 for such crimes include 18 months imprisonment and 76 lashes for "propagating against the regime" and "disturbing public order" (AFP 26 Apr. 2005), "five years in prison for various charges including acting against state security" (Reuters 20 Dec. 2005), and seven years imprisonment for charges "relat[ed] to national security" (AI 27 July 2005).

### **"Warning to seal" document**

Information to update that on the "warning to seal" document contained in the Response to Information Request IRN31310 could not be found among the sources consulted by the Research Directorate. Therefore, the source of the following information dates back to 4 and 10 March 1999 telephone interviews with a lawyer from the New York liaison office of a Tehran law firm. The lawyer stated that a number of factors could lead to the "sealing" of a business, such as non-adherence to government regulations on the part of the business, or involvement in a civil suit by the business or its owner(s) (Law Offices of Alexander Aghayan 4 and 10 Mar. 1999). When a business is sealed the police place a ribbon across its entrance, barring operations until the underlying issue is resolved (ibid.). The lawyer emphasized that the business is "physically sealed" and that an unauthorized breaking of that seal is against the law (ibid.). The person whose business is sealed may challenge the sealing and has "the right to argue before the court" in a civil suit (ibid.). Moreover, if the case is won in a civil suit, then the person whose business was sealed has the right to claim financial damages from the party who initiated the sealing (ibid.).

When a business is sealed, a document, which names the affected business and specifies the reasons for the sealing, is served on the owner and/or the business itself (ibid.). The lawyer stated that this document is the same throughout the country since the legal process of sealing falls under national jurisdiction (ibid.). The lawyer also indicated that the sealing of a business is somewhat similar to cases of bankruptcy or non-payment of rent in North America, insofar as once a business is sealed the reasons for that sealing are posted on its premises (ibid.). Furthermore, the lawyer stated that the document would not be difficult to forge yet, at the same time, nor would it be difficult to check its authenticity with court records in Iran (ibid.).

### **Circumstances under which a private home is "sealed"**

Information to update that on the circumstances under which a private home is "sealed" contained in the Response to Information Request IRN32441 could not be found among the sources consulted by the Research Directorate. Therefore, the source of the following information dates back to 26 August 1999 telephone interview with the lawyer from the New York liaison office of a Tehran law firm. The lawyer said that the statements he made regarding the "warning to seal" document applied as well to the sealing of private homes and personal property (ibid. 26 Aug. 1999). The lawyer referred to such sealings as the "sealing of a person's assets," which occurs as part of either a pre- or post-judgment order from the courts (ibid.). The lawyer explained that an official of the courts (bailiff) goes on site, accompanied by a local police officer, to physically seal the premises by placing a ribbon across the property and to post a notice indicating the premises have been legally sealed (ibid.). The lawyer added that this procedure is the same for civil and criminal cases and that a person who breaks the seal without authorization is subject to arrest (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

#### References

Agence France-Presse (AFP). 26 April 2005. "Iranian Student to be Jailed, Flogged for Demonstrating." (Dialog)

Amnesty International (AI). 27 July 2005. "Urgent Action: Iran: Further Information on Torture/Ill-treatment/Fear for Safety/Medical Concern." (MDE 13/040/2005) <<http://web.amnesty.org/library/Index/ENGMDE130402005?open&of=ENG-IRN>> [Accessed 9 June 2006]

Iran. 22 May 1996. The Islamic Penal Code. Unofficial translation by the Legal Information Service of Pars Associates, Attorneys-at-law, Tehran. Received in correspondence.

Law Offices of Alexander Aghayan, New York. 26 August 1999. Telephone interview with a lawyer.

\_\_\_\_\_. 4 and 10 March 1999. Telephone interviews with a lawyer.

Reuters. 20 December 2005. "RPT - Iran Court Hands Student Activist 5-Year Jail Term." (Factiva)

Sabi and Associates (Attorneys at Law), London, England. 4 May 2006. Correspondence from a lawyer.

#### Additional Sources Consulted

**Oral Sources:** Attempts to contact the Judicial System of the Islamic Republic of Iran, the Justice Administration of Tehran Province and the Head of the Justice Administration of Tehran Province were unsuccessful.

One law firm in Tehran, one law firm in New York and one law firm in London did not provide information.

Legal Iran International Services Bureau did not respond within time constraints.

**Internet sites, including:** Centre of Islamic and Middle Eastern Law, Department of Immigration and Multicultural Affairs of Australia, Deputy of Judicial Training (Iran), Factiva, *Iran Daily*, Iran Focus, Iranian Parliament Library, Islamic Republic News Agency, The Judicial System of the Islamic Republic of Iran, Justice Administration of Tehran Province, Law Offices of Dr. Hassan Amirshahi & Associates, Legal Iran International Services Bureau, Pars Times, State General Inspection Organization, *Tehran Times*.

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